

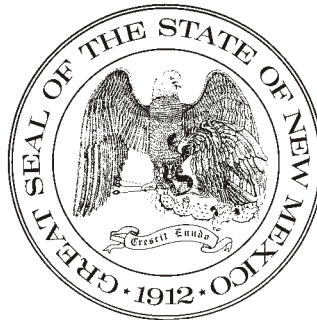
# **INDIAN AFFAIRS COMMITTEE**

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**NEW MEXICO STATE LEGISLATURE**

**2007**

## **INTERIM REPORT**



**January 2008**

*New Mexico Legislative Council Service  
411 State Capitol  
Santa Fe, NM 87505*

## **INDIAN AFFAIRS COMMITTEE 2007 INTERIM SUMMARY**

At its initial meeting of the 2007 interim, the Indian Affairs Committee (IAC) identified 11 areas upon which it intended to focus during the 2007 interim: 1) capital outlay, including tracking the expenditure of allocated funds, coordination with the Navajo Nation, certification of chapters of the Navajo Nation and implementation of the Tribal Infrastructure Act; 2) implementation of the Indian Education Act in coordination with the Public Education Department and the Navajo Nation School Board; 3) health care in Native American communities, including provision of health care services in remote areas; 4) the relationship among the state, tribal entities and the federal Bureau of Indian Affairs (BIA) regarding the improvement and maintenance of rural roads and rural transportation; 5) work force training for Native Americans; 6) review of the pros and cons of formal state recognition of Native American tribal entities; 7) domestic violence in Native American communities; 8) examination of the proposed resumption of uranium mining on tribal lands and an analysis of benefits and detriments resulting from that activity; 9) health concerns in northwest New Mexico and the impact of the proposed Desert Rock power plant; 10) efforts to provide for persons with disabilities, including the elderly, in Native American communities; 11) the cleanup and transfer of ownership of Fort Wingate; and 12) recommendations of the Food Gap Task Force and the Native American Arts and Crafts Authenticity Task Force requested by joint memorials passed in the 2007 legislative session. Following its traditional scheduling procedure, the IAC scheduled many of its meetings to be held at chapters of the Navajo Nation, pueblos and Indian-related institutions. The IAC meetings were conducted at the following locations in addition to the State Capitol: the Alamo, Churchrock, Crystal, Gadii Ahi (Cudeii), Manuelito, San Juan, T'iistoh Sikaad (Burham) and Tohajiilee chapters of the Navajo Nation, the Pueblos of Acoma, Cochiti, Pojoaque, San Felipe and Taos and Red Rock State Park near Gallup. At each meeting located at a chapter house or pueblo, the committee began its meeting with a presentation by the chapter president or pueblo governor on matters of local concern.

Also at its initial meeting, Bennie Shendo, Jr., secretary of Indian affairs, reviewed a number of special appropriations projects then underway, legislation that had been passed during the 2007 legislative session, the Indian Affairs Department's involvement in implementing specific legislative initiatives and ongoing activities at the department, including the tribal leadership institute held in conjunction with the University of New Mexico, the Commission on Urban Affairs, capital outlay training, a state resource guide for tribes and graduate assistantships at New Mexico Highlands University. Rebecca Martinez, capital outlay manager of the Indian Affairs Department, presented the results of the capital outlay projects for Indian country, demonstrating that 2007 was a rewarding year for tribes. The complex problems of ensuring that state appropriations to tribal projects are expended were discussed in depth, and members of the committee commended Ms. Martinez for her successes in coordinating the spending of state funds for tribal projects. Means of discovering conflicts between Navajo Nation and chapter priorities were discussed, and suggestions were made to redesign the funding model for chapters, including roads, equipment, utilities and services, perhaps requiring approval from the Navajo Nation prior to an award of state capital outlay funding. Secretary Shendo also briefed the committee on the status of the Tribal Infrastructure Board. Mildred Waters, Tribal Libraries Program coordinator for the State Library, and Candace Martinez with the Indigenous

Language Institute discussed the tribal library programs currently in place and in development.

The second interim meeting of the IAC was held in July at the Crystal, Churchrock and Manuelito chapters of the Navajo Nation and at Red Rock State Park near Gallup. On the first day of the meeting at the Crystal Chapter, Perry Wilson, chapter president, briefed the committee on the chapter's history and capital outlay needs. A panel to discuss the status of the U.S. Highway 491 Project (Highway 491) included Tom Platero, director of the Navajo Nation Department of Transportation; Judy Willetto from the Navajo Nation Division of Natural Resources; Patricio Guerrerortiz, deputy secretary for programs and infrastructure, New Mexico Department of Transportation (DOT); Hugh Perry, assistant general counsel, DOT; and Steve Harris, chief engineer, DOT. Panel members discussed issues that had thus far prevented the project from moving forward and responded to questions from committee members. Lance Allgood, executive director, City of Gallup Joint Utilities District, reviewed recent congressional hearings on the Gallup-Navajo Water Pipeline Project in which Representative Patricia A. Lundstrom played a significant role. John Leeper, Navajo Nation Department of Water Resources, updated the committee on a number of technical aspects of the project. Members of the Navajo Nation's Division of Social Services came to the committee with a request for funds, since the present allocation from the Children, Youth and Families Department (CYFD) will not be increased despite the fact that there is an increase in the caseload for social services. James Bearzi, bureau chief of the Hazardous Waste Bureau, Water and Waste Management Division, Department of Environment, gave the committee a brief history of Fort Wingate and the cleanup of the property following its decommissioning. Edward Wemytewa, the Fort Wingate coordinator from the Pueblo of Zuni, discussed the "unqualified success" of the cleanup at the fort. Charles Damon, Navajo Nation Council delegate, and Mr. Wemytewa commented on the areas of disagreement between the two tribal entities.

The second day of the meeting began at the chapter house of the Churchrock Chapter. Cal Curley read a statement on behalf of Congressman Tom Udall. Robinson Kelly, vice president of the chapter, and Alice Largo, community services coordinator, discussed the chapter's opposition to the proposed resumption of uranium mining and mentioned the importance of a recent Southwest Research and Information Center report on the health effects of past uranium mining practices. Other members of the chapter discussed their concerns with the possible resumption of uranium mining. The committee spent the rest of the morning touring two mine cleanup sites and was accompanied by Bill Brancard, director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department, and Bill Olson, bureau chief of the Ground Water Quality Bureau of the Water and Waste Management Division of the Department of Environment. The meeting was reconvened in the afternoon in the auditorium at Red Rock State Park. Mr. Brancard and Mr. Olson were joined by Juan Velasquez, vice president of environmental and regulatory affairs for Strathmore Minerals Corporation, and by Stephen B. Etsitty, executive director of the Navajo Nation Environmental Protection Agency, for further discussion of the legacy of uranium mining. Following questions and discussion by committee members, Mr. Brancard and Mr. Olson discussed the future of mining in New Mexico and the ways in which state laws and regulations may affect mining activities, including exploration, conventional mines, in situ leaching mining and milling or

processing sites. Following public comment regarding the potential resumption of uranium mining and milling activities in New Mexico, committee members expressed their views and recommendations.

The third day of the meeting was held at the chapter house of the Manuelito Chapter. Milton Davidson, president of the Manuelito Chapter, spoke to the committee about the chapter's funding priorities. Community Services Coordinator Pauline McCabe gave a PowerPoint presentation on the current activities of the chapter. Representative Ray Begaye and Senator Lynda M. Lovejoy briefed the committee on developments in Indian education from the most recent legislative session. Superintendent of Education Tommy Lewis from the Navajo Nation addressed the committee regarding the Navajo Sovereignty in Education Act and the status of educational efforts by the Navajo Nation. Dr. Catherine Cross Maple, deputy secretary of public education, and Assistant Secretary for Indian Education Nancy Martine-Alonzo, presented to the committee on changes to the Indian Education Act. Sarah Adeky, the Navajo Nation representative to the Indian Education Advisory Council, also presented to the committee. Norman Ration and Keith Franklin spoke to the committee on the importance of including urban Indian students, especially as one-half of the Native American students in New Mexico live in urban areas not contained within a single reservation or pueblo.

The third interim meeting of the IAC was held in August at the Alamo and Tohajiilee chapters of the Navajo Nation and the Pueblo of Acoma. On the first day of the meeting at the Alamo Chapter, Chapter President Buddy Mexicano addressed the committee concerning several items of interest to the Alamo Chapter, including the history of Navajo Route 55, its present condition and proposed improvements. The committee then conducted a tribal roads workshop to permit committee members and representatives from federal, state and tribal transportation agencies to discuss the problems of constructing and maintaining roads in rural tribal areas and to brainstorm about ways in which the state might assist in resolving such problems other than providing funds for road projects. The DOT was represented by Max Valerio, chief engineer, Germaine Chappelle, general counsel, Larry Maynard, District 6 engineer, Alvin Dominguez, District 1 engineer, and Ron Shutiva, tribal liaison. The BIA was represented by Tim Deasis, deputy regional director for the Navajo Regional Office, and Irvin Bekis, Transportation Division manager, Navajo Regional Office. The Navajo Nation was represented by Sampson Begay, chair of the Navajo Nation Council's Transportation and Community Development Committee, Tony Padilla, chair of the Eastern Agency Road Committee, and Tom Platero, director of the Navajo Nation Department of Transportation. Following presentations on behalf of the represented entities and questions and discussion by committee members, Ms. Chappelle gave the committee an update on the status of negotiations regarding the planned improvements to U.S. Highway 491.

The second day of the meeting was conducted at the Haak'u Museum in the Pueblo of Acoma. Governor Jason Johnson welcomed the committee and noted that diabetes is the number-one issue for Native Americans. First Lieutenant Governor Histia requested continued support from the state through the Tribal Infrastructure Fund, capital outlay appropriations and gaming compact negotiations. Ken Lucero, chair of the All Indian Pueblo Council (AIPC),

Ohkay Owingeh Governor Joe Garcia, AICP vice chair, and Dr. Tassie Parker, vice president of the board of First Nations Health Source, addressed the committee regarding the status of Native American health care and the Indian Health Care Improvement Act, which was introduced during the 2007 legislative session. Milton Head, representing the Bluewater Valley Downstream Alliance, addressed the committee regarding concerns about contamination resulting from past uranium mining and milling activities. Laura Watchempino, water quality specialist with the Haak'u Water Office, Pueblo of Acoma, briefed the committee on the concerns of the pueblo regarding the proposed resumption of uranium mining and milling activities. Jimmie Torvio with the Acoma Water Rights Commission agreed that the proposals for new mines in the area of Mount Taylor would be an invasion of sacred lands. Travis Suazo, tourism development director/Indian tourism program manager, Tourism Department, presented a PowerPoint presentation regarding the state's Indian Tourism Program. Randy Howarth, operations manager for the Sky City Cultural Center and the Haak'u Museum, briefed the committee on the background of tourism at the Pueblo of Acoma and the development of the Sky City Cultural Center and the Haak'u Museum. Following the presentation on Native American culture and tourism development, committee members and staff participated in a tour of Sky City.

The third day of the meeting was held at the chapter house of the Tohajiilee chapter. Juana Platero, who is the reigning Miss Tohajiilee, introduced herself and spoke about her experiences as the local high school princess. Chapter Vice President Mark Begay gave the committee an extensive review of the history of the chapter and the Cañoncito Band of the Navajo Nation and reviewed the capital outlay needs of the chapters. Numerous other representatives of the chapter addressed the committee regarding chapter issues, including the impact of education and the No Child Left Behind Act Program, the Headstart Program, housing, the status of the new Cañoncito Health Clinic, school-based health care, addiction and mental health issues and diabetes. Secretary of State Mary Herrera introduced herself and members of her staff. Daniel Ivey-Soto, deputy secretary of state in charge of election, ethics and legal issues, discussed what the office is doing to implement the provisions of House Bill 1140 from the 2007 legislative session providing for alternative early voting locations on tribal lands, including mobile voting sites. Martin Aguilar described the efforts he has been making to prepare for the 2008 elections, including increasing access for Native American voters through precinct development. Eileen Martinez, Cibola County clerk, explained what her office has been doing to avoid the problems experienced in the 2004 elections. Secretary Herrera emphasized that her office is committed to increasing Native American voter registration and turnout, but that there is a need for \$250,000 to enable compliance with the federal Minority Language Requirement Act.

The fourth interim meeting of the IAC was held in September at the Gadii Ahi (Cudeii), T'iistoh Sikaad (Burham) and San Juan chapters of the Navajo Nation. On the first day of the meeting at the Gadii Ahi Chapter, Chapter President Harry Descheenie gave a brief history of the chapter and updated the committee on the chapter's plans for economic development and capital outlay needs. Representatives of the Tohatchi Veterans Organization, including Commander Charles Arviso, past Commander Tom Tony and others, presented a proposal to build a new

community center in Tohatchi. Regina Roanhorse, a volunteer and consumer advocate, and Dr. Caroline Morris, a psychologist with the Navajo Nation Department of Health Behavioral Health Services, presented to the committee behavioral health issues in the Native American community. Raymond Jim, president of the Shiprock Agency Navajo Veterans' Organization, requested that the committee support legislation that would extend the state statute of limitations relating to the filing of requests for state income tax refunds. Etta Arviso of the Huerfano Chapter of the Navajo Nation asked the committee to consider resolutions adopted by the Huerfano and Nageezi chapters of the Navajo Nation requesting that the Navajo Nation Council appropriate funds to pay the state Office of the Medical Investigator (OMI) for past services rendered so that autopsy and other related death investigation services can once again be provided by the state to the Navajo Nation. Tim Stepetic and Scott Wilson, associate directors of the OMI, addressed the committee regarding the background of services rendered by the OMI to tribal entities, including the Navajo Nation. Paul Gutierrez, vice provost for outreach services and associate dean, Cooperative Extension Service, New Mexico State University (NMSU), Alton Henderson, Navajo Nation Department of Agriculture, Anthony Howard, Navajo Technical College extension agent, and Benita Litson, Diné College Land Grant Office, addressed the committee regarding tribal extension services. The mission of the New Mexico tribal extension initiative is to develop and deliver community-based education programs that will revitalize indigenous agriculture, implement culturally appropriate youth leadership projects and strengthen the bonds among individuals, families and communities, and the overall goal of the initiative is to serve all 22 tribal entities through the planning of eight tribal extension centers.

The second day of the meeting was conducted at the chapter house of the T'iistoh Sikaad chapter. Albert Davis, president, and Art Yazzie, vice president, acquainted the committee with the history of T'iistoh Sikaad ("Big Tree Planted"), whose name was changed last year from that given by missionaries in 1923. The chapter representatives discussed the chapter's finances and listed the chapter's capital outlay priorities. George Arthur, Navajo Nation Council delegate, addressed the committee on the issues of the chapter's natural resources, chapter certification, the proposed Desert Rock power plant, the planned Gallup-Navajo Water Supply Pipeline Project and the status of proposed improvements to U.S. Highway 491. Dave Simon, director of New Mexico state parks, introduced Martin Begaye, assistant director of the Navajo Nation Parks and Recreation Department, and Herb Yahze, Monument Valley park manager and State Park Advisory Board member. The panelists discussed a new policy and a memorandum of understanding between the state and the Navajo Nation. Nathan Plagens, vice president of Desert Rock Energy Company, LLC, and Steven Begaye, general manager for the Diné Power Company, updated the committee on the status of the proposed Desert Rock power plant. The proponents are still deciding whether to approach the state legislature again in 2008 for compensating tax relief. The presenters reviewed the environmental attributes of the plants, comparing anticipated emissions to those of other types of power plants. Elouise Brown from the Doodah Desert Rock Committee told the committee the Desert Rock site is being watched by environmentalists across the world. Ms. Brown and other representatives of the Doodah Desert Rock Committee discussed their concerns with the proposed power plant. Following the panel discussion on the status of the proposed Desert Rock power plant, members of the committee

were given a tour of the site of the proposed plant.

The third day of the meeting was held at the chapter house of the San Juan Chapter. President Wilbur C. Begay presented an extensive history of the San Juan Chapter and gave an update of the status of current capital outlay projects and a review of projected capital outlay needs. Sampson Begay, chair of the Transportation and Community Development Committee (TCDC) of the Navajo Nation Council; TCDC members Jerry Bodie, Johnny Naize, Willie Begaye and David Rico; Herbert Clah, director of the Shiprock Local Government Support Center; and Alfreda Lee of the Navajo Nation Office of the Auditor General addressed the committee regarding the benefits of chapter certification and the services to chapters under the Local Government Act of the Navajo Nation. Teresa Gomez, deputy secretary of Indian affairs, and Rebecca Martinez, capital outlay manager for the Indian Affairs Department, updated the committee on the status of capital outlay appropriations to the Navajo Nation and its chapters. Arbin Mitchell, division director of the Division of Community Development, and Scott House, who is with the Capital Improvement Office, explained what the Navajo Nation has been doing to help streamline the approval process so that state capital outlay appropriations can be expended in a timely manner.

The fifth interim meeting of the IAC was held in October at the Pueblos of Cochiti and San Felipe and at the State Capitol. On the first day of the meeting at the Pueblo of Cochiti, Governor Ray Trujillo was joined by Lieutenant Governor Vernon Garcia and Regis Pecos, assistant to the speaker and former governor of the Pueblo of Cochiti. Mr. Pecos gave an overview of the history of the Cochiti lands and outlined upcoming capital outlay projects. Secretary Shendo and Rebecca Martinez, capital outlay manager for the Indian Affairs Department, presented the 20 projects (worth a total of \$16,689,000) being considered by the Tribal Infrastructure Board for funding through the Tribal Infrastructure Project Fund. Ray Espinoza, director of the Office of Indian Elder Affairs for the Aging and Long-Term Services Department (ALTSD), gave a background of the Office of Indian Elder Affairs and reviewed its ongoing operations and needs. Mr. Espinoza was joined by Joseph Ray, consultant for the Native American Outreach Program of ALTSD, who requested additional funding to expand services this year, especially for in-home care, and provided the committee with a list of prioritized projects. Mr. Ray also spoke about his goal of establishing independent living centers in the Pueblos of San Felipe and Laguna. Betty Sparrow Doris, secretary of the Workforce Solutions Department, and Deputy Secretary Raymond Gonzales gave a presentation on the services that have been provided by the state in the past. The department had been created during the 2007 legislative session by a bill that merged the Labor Department and the Office of Workforce Training and Development, and Secretary Doris hopes to initiate dialogue with the Navajo Nation to increase and improve service delivery, as well as increasing the leverage of money it receives from the department.

The second day of the meeting was conducted at the State Capitol. Lieutenant Curtis Williams, emergency manager for the Mescalero Apache Fire Department, requested funding in the amount of \$4.07 million for tribal emergency management offices for all 22 tribes and pueblos (\$185,000 per tribal entity). Mel Tafoya, director of special projects and emergency

management for the Pueblo of Santa Clara, and Richard Martinez, assistant director of special projects for the Pueblo of Santa Clara, presented with Lieutenant Williams. Speaker Lujan and his assistant, Mr. Pecos, gave the committee an overview of the Native American Health Care Improvement Act that will be introduced during the 2008 legislative session and asked for the committee's support. Dorian Dodson, secretary of children, youth and families, presented to the committee regarding Governor Richardson's executive order directing agencies to work with tribal entities on a consultation policy that she interpreted to mean three things: 1) it is incumbent on the CYFD to provide the very best services; 2) CYFD must be a respectful partner in assisting tribes to develop their own delivery systems; and 3) CYFD must collaborate on issues of importance. Art Hull, governmental affairs specialist for Public Service Company of New Mexico (PNM), and Cathy Newby, tribal relations administrator for PNM, presented the background for PNM's need to increase rates by 16% or 17%. Sharon Pino, domestic violence czar, and Teresa Gomez, deputy secretary for Indian affairs, gave an update on domestic violence activities. An update on House Memorial 94, which requires a study of domestic violence against Native American women, was presented by Amber Carillo of the Pueblo of Laguna.

The third day of the meeting was held at the Pueblo of San Felipe. Governor Sandoval gave a brief history of the Pueblo of San Felipe, stressing the importance of using and preserving Keres, the pueblo's native language. Bruce Garcia, tribal administrator, explained that he makes sure that community members have good water and wastewater infrastructure. Dr. Charles Kaplan presented the state of the tribe's educational resources, which include a new library, internet access for adults and youth, interlibrary loans, book clubs and GED classes. Ronald Reid, Ph.D., tribal liaison for the New Mexico Department of Health, and Roxanne Spruce-Bly, chief executive officer of the New Mexico Native American Health Council, gave a presentation on the American Indian Health Advisory Committee. The committee consists of 15 voting members nominated by the AIPC, the Navajo Nation, the Jicarilla Apache Nation, the Mescalero Apache Tribe and designated off-reservation organizations within the state of New Mexico.

The sixth and final meeting of the IAC for the 2007 interim was held in November at the Pueblos of Taos and Pojoaque and at the State Capitol. On the first day of the meeting at the Pueblo of Taos, the committee received an update regarding ongoing projects at the pueblo, including programs and capital outlay projects. The pueblo also gave a PowerPoint presentation regarding the Pueblo of Taos' status as a world heritage site. Howard Spiegelman, executive director of the New Mexico Alliance for School-Based Health Care, spoke about increasing access to health care for Native American youth and screened a video made by Native American students from the Pueblo of Laguna regarding the state-supported peer-to-peer suicide prevention program. Bill Verant, director of the Financial Institutions Division of the Regulation and Licensing Department, addressed the issue of subprime mortgage lending in New Mexico and commented on a draft bill that is being proposed by Representative Lundstrom. Governor Craig Quanchello of the Pueblo of Picuris addressed the committee regarding the financial plight of Native American communities that do not have the financial support of gaming activities.

The second day of the meeting was conducted at the Pueblo of Pojoaque. Teresa Gomez,



deputy secretary of Indian Affairs, and Attorney General Gary King presented a report on formal state recognition of Indian tribes as requested by Senate Joint Memorial 42 passed during the 2007 legislative session. Curtis Benally, vice president of Diné College, and Marnie Carroll with the Diné Environmental Institute gave a status report on the proposed new library at the Shiprock Campus of the Diné College and the proposed Diné Environmental Institute. Robert Ortiz, deputy secretary of transportation, and Representative Lundstrom presented the final report of the Transportation Technical Committee that was convened during the interim pursuant to House Memorial 35 passed during the 2007 legislative session. The committee examined the funding basis for transportation projects in New Mexico and formulated recommendations for sustainable funding strategies. Nancy Martine-Alonzo, assistant secretary for Indian education, and Benjamin Atencio, chair of the New Mexico Indian Advisory Council, briefed the committee on efforts to implement the Indian Education Act and reviewed the government-to-government presentation on Indian education that was held on October 10, 2007. John D'Antonio, state engineer, and Estevan Lopez, director of the Interstate Stream Commission, presented the annual report to the committee regarding the status of proposed Indian water rights settlements, distribution of funds from the Indian Water Rights Settlement Fund and recommendations regarding appropriations to implement Indian water rights settlements.

The third day of the meeting was held at the State Capitol. Dr. Reed Dasenbrock, secretary-designate of higher education, briefed the committee on the status of Native American students in higher education in New Mexico and ongoing efforts to improve the success of Native American students in higher education. Secretary Shendo reviewed the department's actions during the interim and indicated that none of the department's suggested legislative priorities except health care reform had so far received approval from the Office of the Governor. Rebecca Martinez, capital outlay manager for the Indian Affairs Department, reviewed the status of capital outlay appropriations that were being administered by the department. Chase Van Gorder, staff attorney, presented the committee with draft legislation for the committee to consider endorsing. The committee considered and voted on initiatives for the 2007 legislative session, including substantive legislation, memorials and appropriations. The committee voted to endorse the following proposals:

#### Substantive Bills

- Subprime Mortgage Lending - Underwriting Criteria
- Native American Veterans Tax Refunds
- Capital Outlay Reversions to Tribal Infrastructure Project Fund
- Uranium Mining Drilling Restrictions
- Uranium Legacy Cleanup Act (Concept)
- Native American Health Care Improvement Act (Concept)

#### Memorials

- Navajo-Gallup Water Supply Pipeline
- State Superfund Districts Study
- "Tour of the Nations" Bicycle Event
- Native American Telecommunications Tax Collections

### Appropriations

- Eastern Navajo Agency Kidney Study (\$100,000)
- Tribal Transportation Projects (10% of Gaming Revenue)
- McKinley County Outdoor Recreation (\$25,000)
- NMSU Tribal Cooperative Extension Service (\$500,000)
- Uranium Health Study (\$200,000)
- Independent Living Centers (\$250,000)
- Tribal Emergency Management (\$4,070,000) (Sponsor Withdrawn)
- Indian Education Act (\$2,500,000)
- Tribal Emergency Management (\$450,000)
- Native American Arts and Crafts (\$300,000)
- Native American Peer-to-Peer Suicide Prevention (\$100,000)

At the conclusion of its meetings for the 2007 interim, the IAC had heard testimony regarding all of the elements of its work plan as proposed at its initial meeting and approved by the Legislative Council except for the reports of task forces requested by the legislature but not appointed by the governor. By conducting its meetings at various pueblos and chapters of the Navajo Nation, the IAC has sought to bring the legislative process to locations where the Native American population of the state can observe its proceedings and provide direct input.

**2007 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
INDIAN AFFAIRS COMMITTEE**

**Membership**

Rep. James Roger Madalena, Co-chair  
Sen. John Pinto, Co-chair  
Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Dianna J. Duran  
Rep. Justine Fox-Young  
Rep. Manuel G. Herrera  
Sen. Lynda M. Lovejoy

Rep. Patricia A. Lundstrom  
Rep. John N. Pena  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn  
Rep. W. C. "Dub" Williams

**Advisory Members**

Sen. Ben D. Altamirano  
Sen. Joseph J. Carraro  
Rep. Ernest H. Chavez  
Rep. Ben Lujan  
Sen. Richard C. Martinez

Rep. Debbie A. Rodella  
Rep. Nick L. Salazar  
Sen. William E. Sharer  
Sen. David Ulibarri

**Work Plan**

The Indian Affairs Committee has existed since 1989 as a result of post-session New Mexico Legislative Council action each year. In view of the fact that the committee's work addresses issues relating principally to New Mexico's Native American population, the committee strives to conduct its meetings in locations that are accessible to the state's tribal members and their leaders. The committee views its meetings as an essential way of relating the work of the legislature to this segment of its constituency. This year, in addition to meetings in Santa Fe, the committee plans to meet at the Ute Mountain Ute Tribe in Towaoc, Colorado, at seven chapters of the Navajo Nation and at six of the pueblos.

A. The Indian Affairs Committee proposes to explore and discuss the following topics during the 2007 interim:

1. capital outlay, including tracking the expenditure of allocated funds, coordination with the Navajo Nation, certification of chapters of the Navajo Nation and implementation of the Tribal Infrastructure Act;
2. implementation of the Indian Education Act in coordination with the Public Education Department and the Navajo Nation School Board;
3. health care in Native American communities, including provision of health care services in remote areas;
4. the relationship among the state, tribal entities and the federal Bureau of Indian

- Af4airs regarding the improvement and maintenance of rural roads and rural transportation;
5. workforce training for Native Americans;
  6. review of the pros and cons of formal state recognition of Native American tribal entities;
  7. domestic violence in Native American communities;
  8. examination of the proposed resumption of uranium mining on tribal lands and an analysis of benefits and detriments resulting from that activity;
  9. health concerns in northwest New Mexico and the impact of the proposed Desert Rock Power Plant;
  10. efforts to provide for persons with disabilities, including the elderly, in Native American communities;
  11. the cleanup and transfer of ownership of Fort Wingate; and
  12. recommendations of the Food Gap Task Force and the Native American Arts and Crafts Authenticity Task Force requested by joint memorials passed in the 2007 legislative session.

B. The committee will coordinate, as needed, with other committees regarding presentations of subject matter of common concern.

## **2007 APPROVED MEETING SCHEDULE**

<b><u>Date</u></b>	<b><u>Location</u></b>
June 18	Santa Fe
July 9-11	Crystal, Churchrock and Manuelito Chapters, Navajo Nation
August 13-15	Pueblo of Acoma; Alamo and Tohajiilee Chapters, Navajo Nation
September 19-21	Towaoc, Colorado; T'iistoh Sikaad (Burnham) and San Juan Chapters, Navajo Nation
October 3-5	Pueblos of Cochiti, Santo Domingo and San Felipe
November 5-7	Pueblos of Taos and Pojoaque; Santa Fe

**TENTATIVE AGENDA  
for the  
FIRST MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**June 18, 2007  
Room 322, State Capitol**

**Monday, June 18**

- 10:00 a.m.     **Call to Order**
- 10:05 a.m.     **2007 Legislation — Summary**  
                  —Chase Van Gorder, Staff Attorney, Legislative Council Service
- 11:00 a.m.     **Indian Affairs Department — Update**  
                  —Benny Shendo, Jr., Secretary of Indian Affairs  
                  —Rebecca Martinez, Capital Outlay Manager, Indian Affairs Department  
                  —Member, Tribal Infrastructure Board
- 12:00 noon     **Lunch**
- 1:00 p.m.     **State Library — Native American Language Web Site**  
                  —Mildred Walters, Tribal Librarian, State Library  
                  —Inee Slaughter, Director, Indigenous Language Institute
- 2:00 p.m.     **2007 Interim Work Plan and Meeting Schedule Development**  
                  —Chase Van Gorder, Staff Attorney, Legislative Council Service
- 3:00 p.m.     **Adjourn**

**MINUTES  
of the  
FIRST MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**June 18, 2007  
Room 322, State Capitol  
Santa Fe**

The first meeting of the Indian Affairs Committee was called to order by Senator John Pinto, co-chair, at 10:15 a.m. in Room 322 of the State Capitol in Santa Fe.

**Present**

Rep. James Roger Madalena, Co-chair  
Sen. John Pinto, Co-chair  
Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Dianna J. Duran  
Sen. Lynda M. Lovejoy  
Rep. Patricia A. Lundstrom  
Rep. John Pena  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Rep. Justine Fox-Young  
Rep. Manuel G. Herrera  
Rep. W. C. "Dub" Williams

**Advisory Members**

Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella  
Rep. Nick L. Salazar

Sen. Ben D. Altamirano  
Sen. William E. Sharer  
Sen. David Ulibarri

**Staff**

Chase Van Gorder  
Jennie Lusk  
Larry Matlock

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Monday, June 18 — State Capitol, Santa Fe**

### **2007 Legislation — Summary**

Mr. Van Gorder reviewed the fate of bills and memorials endorsed by the committee for the 2007 session and tracked, insofar as he was able, funding related to committee-endorsed appropriation bills House Bill 2 and House Bill 2, Junior. He noted that for the 2008 legislative session, committee-endorsed bills and agency bills will be introduced in only one chamber and that committee-endorsed bills will be able to be prefiled before the session begins. New rules are being considered to permit senators and representatives to co-sponsor bills introduced in the other chamber. Representative Madalena questioned whether the new rules apply to memorials as well and Mr. Van Gorder said he would double-check.

Committee members added information on bills relevant to the committee's interests. Senator Martinez noted approval of the revised Indian Gaming Compact acts and for Indian education programs at the University of New Mexico. Representative Rodella noted a tax exemption included in House Bill 638. Representative Lundstrom noted that the administration assisted with a capital outlay appropriation in the amount of \$750,000 for Red Rock State Park. Senator Carraro questioned how the committee will be responsible for the oversight of the Tribal Infrastructure Act and was informed that the committee will have the authority to give advice on funding applications but will not have veto authority.

### **Indian Affairs Department — Update**

Secretary of Indian Affairs Benny Shendo introduced members of the department's staff present at the meeting and reported that the Indian Affairs Department had received sufficient additional funds to add a staff policy analyst. The department now has 14 staff members and a summer law clerk. The secretary's goals include getting additional funding from the next legislative session for increased staffing to meet the demands of the department.

The secretary reviewed a number of special appropriations projects now underway, including establishing a database for veterans, case management services for radiation exposure victims, technical assistance to partner with tribal communities and the Economic Development Department, archives at the Institute of American Indian Arts, culturally sensitive programming for the Indian Education Division of the Public Education Department and youth conservation programs. The department has received money for a two-pronged tobacco cessation program that embraces both the traditional native view of smoking as sacred and health concerns for smokers. One prong involves population-based mini-grants ranging from \$5,000 to \$20,000 that have been provided to several tribes and pueblos. The other prong involves funds for specific grant proposals; five proposals have been received ranging from \$52,000 to \$90,000. The department plans to convene a conference in the summer of 2008 involving hundreds of children to address various ways of discouraging the nonsacred use of tobacco.

Secretary Shendo then reviewed legislation that had been passed during the 2007 legislative session and the department's involvement in implementing the following legislative initiatives: 1) the Reburial Grounds Act (Laws 2007, Chapters 299 and 300); a Reburial Grounds Act tribal forum has been scheduled for July 27 at the Indian Pueblo Cultural Center in

Albuquerque; 2) Senate Joint Memorial 42 requesting the study of the feasibility and advisability of formal recognition by the state of tribal entities; 3) House Memorial 42 requesting a multiagency study of domestic violence against Native American women; 4) House Memorial 91 requesting a study of the health of residents in the Four Corners area of the state with an emphasis on respiratory illnesses; 5) House Joint Memorial 10 requesting the governor to appoint a "food gap task force" to study and make recommendations to increase access to healthy, affordable and culturally appropriate foods; 6) Senate Bill 600 (Laws 2007, Chapter 114) creating a task force to design cultural competence education requirements in health education programs; and 7) House Joint Memorial 62 and Senate Joint Memorial 71 requesting the governor to appoint a "Native American arts and crafts authenticity task force" to study and make recommendations regarding how to ensure the authenticity of goods being portrayed as Native American arts and crafts. Secretary Shendo reviewed ongoing activities at the department, including the tribal leadership institute held in conjunction with University of New Mexico, the Commission on Urban Affairs, capital outlay training, a state resource guide for tribes and graduate assistanceships at New Mexico Highlands University.

Speaker Lujan introduced the Native American fellows from the summer policy institute held at the Santa Fe Indian School and thanked Regis Pecos for his organizational work with the students.

Rebecca Martinez, capital outlay manager of the Indian Affairs Department, presented the results of the capital outlay projects for Indian country, demonstrating that 2007 was a rewarding year for tribes. Of \$6 billion in capital outlay requests statewide, she said \$30.3 million was funneled to the Indian Affairs Department for tribal projects – an increase of 10 percent over the previous fiscal year. Ms. Martinez noted that there were approximately \$12 million for 82 projects for the Navajo Nation, \$11.7 million for 56 pueblo projects, \$1.8 million for eight Apache projects and \$4.9 million for other projects that were not tribe-specific. She described her process in consulting with tribes and reconciling reports, noting that joint powers agreements require quarterly reports and that monitoring has become very careful in order to help move projects along. Training for fiscal year 2008 begins July 1, and her aim is to individualize training in the capital outlay process so that tribal program managers as well as tribal leaders are involved. The complex problems of ensuring that state appropriations to tribal projects are expended were discussed in depth, and members of the committee commended Ms. Martinez for her successes in coordinating the spending of state funds for tribal projects.

Secretary Shendo addressed committee concerns about one particular incident in which the Department of Finance and Administration found that a tribal reauthorization was invalid. Stephanie Kiger, general counsel for the department, told the committee that the State Board of Finance made the decision that the reauthorization was invalid rather than simply deserving of clerical correction. There was discussion, though no resolution, of referring the matter to the attorney general for an opinion. Committee members noted that capital outlay problems with pueblos is nominal, in contrast to such problems with Navajo Nation chapters.

The Indian Affairs Department was asked for new maps of tribes and chapters executed



with new chapter names and for a list of the total Navajo Nation projects versus a list of how much the projects have actually received. Means of discovering conflicts between Navajo Nation and chapter priorities were discussed in some depth, and suggestions were made to redesign the funding model for chapters, including roads, equipment, utilities and services, perhaps requiring approval from the Navajo Nation prior to an award of state capital outlay funding. Speaker Lujan requested that Robert Apodaca from the Department of Finance and Administration present the committee with a paper trail on the incident with the reversion of capital based on the Department of Finance and Administration's decision against reauthorization of funds in the Gallup area. Senator Martinez suggested spending a day on capital outlay again this interim, as this was helpful two years ago. Senator Carraro suggested asking how other states deal with conflicts with the Navajo Nation over capital outlay. Representative Madalena asked that Ms. Martinez provide the committee with an updated list of capital outlay projects.

Secretary Shendo reported that the Tribal Infrastructure Board, which he chairs, has met recently. Money in the fund is from reversions of tribal capital outlay projects. The committee includes Mr. Apodaca, the departments of finance and administration, education and health, environment and ex-officio members of the Bureau of Indian Affairs and the Indian Health Service, among others. The committee is seeking only three or four priorities from each chapter even though such priorities may conflict with Navajo Nation priorities. The board also examines project readiness and tribal capacity to complete projects as a means of organizing priorities. Senator Ryan asked for the secretary's advice on how to deal with new needs for tribal infrastructure funding so that the committee can be aware of projects that are not yet met with current funding.

### **2007 Interim Work Plan and Meeting Schedule Development**

Mr. Van Gorder recommended focusing the Indian Affairs Committee agendas for this interim, examining fewer issues per day than the committee has been doing. He has worked with Representative Madalena to avoid topics already discussed as well as to explore important current issues. Dates selected by the Legislative Council Service were accepted by the committee. Senator Adair suggested that any field trips be arranged for the second day to maximize attendance. Locations were changed so that the committee will travel as follows: July - Crystal, Red Rock and Church Rock chapters of the Navajo Nation; August - Alamo and Tohajiilee chapters of the Navajo Nation and the Pueblo of Acoma; September - Ute Mountain Ute Tribe, T'iistoh Sikaad and San Juan chapters of the Navajo Nation; October - Pueblos of Cochiti, Santo Domingo and San Felipe; and November - Pueblo of Taos and the State Capitol. Following the discussion of topics to be addressed by the committee during the 2007 interim, Representative Lundstrom moved that the committee approve the proposed work plan. The motion was seconded by Senator Pinto and passed without objection. Mr. Van Gorder will work with the committee co-chairs to finalize the list of topics to be included in the work plan. Representative Lundstrom moved that the committee send letters to the governor requesting that he proceed with the appointment of the food gap task force and the Native American arts and crafts authenticity task force as requested in joint memorials passed during the 2007 legislative session. The motion was seconded by Senator Pinto and passed without objection.

### **State Library — Native American Language Web Site**

Mildred Waters, Tribal Libraries Program coordinator for the State Library, and Candace Martinez with the Indigenous Language Institute discussed the tribal library programs currently in place and in development. The "Telling the Stories" Program is intended to reach Native Americans in their own languages with information about the wide array of cultural programs and services available in New Mexico. The program features information in native languages, sometimes in written form and sometime available orally through the web site. The presenters reviewed how the web site will work and the progress made in getting Native American tribes, nations and pueblos to participate. The project was undertaken in response to criticisms from former Senator Leonard Tsosie.

### **Adjournment**

There being no further business before the committee, the first meeting of the Indian Affairs Committee for the 2007 interim was adjourned at 2:25 p.m.

**Revised: July 6, 2007**

**TENTATIVE AGENDA**  
**for the**  
**SECOND MEETING**  
**of the**  
**INDIAN AFFAIRS COMMITTEE**

**July 9 - 11, 2007**  
**Crystal Chapter, New Mexico**  
**Churchrock Chapter, New Mexico**  
**Red Rock State Park, New Mexico**  
**Manuelito Chapter, New Mexico**

**Monday, July 9 — Crystal Chapter, Navajo Nation**

10:00 a.m.     **Call to Order**

10:05 a.m.     **Crystal Chapter, Navajo Nation — Status Update**

—Perry Wilson, President  
—Roy B. Louis, Vice President  
—Ralph Bennett, Jr., Council Delegate  
—Roscoe Smith, Council Delegate

11:00 a.m.     **State Highway 491 — Status Update**

—Germaine R. Chappelle, General Counsel, Department of Transportation  
    (Invited)  
—Tom Platero, Director, Navajo Nation Department of Transportation (Invited)

12:00 noon     **Lunch**

1:00 p.m.     **Navajo Nation Division of Social Services — Funding Request**

—Cora Phillips, Executive Director, Division of Social Services, Navajo Nation  
—Don Benally, Regional Director, Eastern Agency, Division of Social Services,  
    Navajo Nation  
—Nancy Evans, Regional Director, Shiprock Agency, Division of Social  
    Services, Navajo Nation  
—Lucinda Morris, Regional Director, Fort Defiance Agency, Division of Social  
    Services, Navajo Nation

1:30 p.m.     **Navajo-Gallup Water Pipeline — Status Update**

—Tanya Trujillo, General Counsel, Interstate Stream Commission  
—Jason John, Principal Hydrologist, Water Management Branch, Navajo Nation  
    Department of Water Resources  
—Lance Allgood, Executive Director, City of Gallup Joint Utilities District

2:30 p.m.     **Fort Wingate — Status Update**  
—James Bearzi, Bureau Chief, Hazardous Waste Bureau, Water and Waste  
Management Division, Department of Environment  
—Charlene Begaye-Platero, Navajo Nation Division of Economic Development  
(Invited)  
—Edward Wemytewa, Fort Wingate Coordinator, Pueblo of Zuni (Invited)

4:00 p.m.     **Recess**

**Tuesday, July 10 — Churchrock Chapter, Navajo Nation; Red Rock State Park**

9:00 a.m.     **Call to Order**

9:05 a.m.     **Churchrock Chapter, Navajo Nation — Status Update**  
—Johnny Livingston, President  
—Robinson Kelly, Vice President  
—Charles Damon, Council Delegate

10:00 a.m.    **Tour of Uranium Mining Sites**

12:30 p.m.    **Working Lunch — Red Rock State Park**

12:30 p.m.    **Legacy of Uranium Mining and Milling — Status Update**  
—Bill Olson, Bureau Chief, Groundwater Quality Bureau, Water and Waste  
Management Division, Department of Environment  
—Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals and  
Natural Resources Department  
—Stephen B. Etsitty, Executive Director, Navajo Nation Environmental  
Protection Agency  
—Juan Velasquez, Vice President, Environmental and Regulatory Affairs,  
Strathmore Minerals Corporation

2:00 p.m.     **State Regulation of Present and Future Uranium Mining — Update**  
—Bill Olson, Bureau Chief, Groundwater Quality Bureau, Water and Waste  
Management Division, Department of Environment  
—Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals and  
Natural Resources Department

3:00 p.m.     **Resumption of Uranium Mining — Tribal Perspectives**  
—Representative, Office of the President/Vice President, Navajo Nation (Invited)  
—Lawrence T. Morgan, Speaker, Navajo Nation Council (Invited)  
—Governor Jason Johnson, Pueblo of Acoma (Invited)  
—Governor John Antonio, Sr., Pueblo of Laguna (Invited)

4:00 p.m.      **Public Comment**

5:00 p.m.      **Recess**

**Wednesday, July 11 — Manuelito Chapter, Navajo Nation**

9:00 a.m.      **Call to Order**

9:05 a.m.      **Manuelito Chapter, Navajo Nation — Status Update**

—Milton Davidson, President

—Julia Ellison, Vice President

—Harriett K. Becenti, Council Delegate

10:00 a.m.      **Implementation of Amendments to the Indian Education Act**

—Nancy Martinez-Alonzo, Assistant Secretary, Indian Education Division and  
Dr. Catherine Cross Maple, Deputy Secretary, Public Education  
Department

—Dr. Tommy Lewis, Superintendent of Schools, Navajo Nation

—Dr. Ben Atencio, Vice Chair, and Zelda Yazza, Secretary, Indian Education  
Advisory Council

—Sarah Adeky, Navajo Nation Representative, Indian Education Advisory  
Council

—Norman Ration and Keith Franklin, Albuquerque Public Schools Indian  
Education Unit and Albuquerque Unit and Albuquerque Public Schools  
Superintendent's Community Council on Equity

12:00 noon    **Lunch**

1:00 p.m.      **Adjourn**

**MINUTES  
of the  
SECOND MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**July 9-11, 2007  
Crystal Chapter, New Mexico  
Churchrock Chapter, New Mexico  
Red Rock State Park, New Mexico  
Manuelito Chapter, New Mexico**

The second meeting of the Indian Affairs Committee (IAC) for the 2007 interim was called to order by Senator John Pinto, co-chair, at 10:10 a.m. in the chapter house of the Crystal Chapter of the Navajo Nation.

**Present**

Sen. John Pinto, Co-Chair  
Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Dianna J. Duran (7/9)  
Rep. Justine Fox-Young (7/10)  
Sen. Lynda M. Lovejoy  
Rep. Patricia A. Lundstrom  
Rep. John Pena  
Sen. Lidio G. Rainaldi (7/10, 7/11)  
Sen. John C. Ryan (7/10, 7/11)  
Rep. Gloria C. Vaughn

**Advisory Members**

Rep. Ernest H. Chavez  
Sen. Richard C. Martinez  
Rep. Nick L. Salazar  
Sen. David Ulibarri

**Absent**

Rep. James Roger Madalena, Co-Chair  
Rep. Manuel G. Herrera  
Sen. Nancy Rodriguez  
Rep. W. C. "Dub" Williams

Sen. Ben D. Altamirano  
Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Rep. Debbie A. Rodella  
Sen. William E. Sharer

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Chase Van Gorder  
Jennie Lusk  
Larry Matlock

**Guests**

The guest list is in the meeting file.  
Copies of all handouts and written testimony are in the meeting file.

## **Monday, July 9 — Crystal Chapter, Navajo Nation**

### **Crystal Chapter, Navajo Nation — Status Update**

Perry Wilson, chapter president, introduced himself and the chapter's staff to the committee. The Crystal Chapter, with 21,000 members, is the sixth-largest chapter of the Navajo Nation and the largest chapter in New Mexico. The chapter straddles two state and three county lines. The chapter was dedicated in 1963 at the site of a trading post built in 1890 but that closed in 1990. Now the chapter operates a senior citizen center and a Head Start Program. The chapter has more Navajo code talkers than any other chapter. The chapter is relying on farming less these days than it once did. The chapter's legislative priorities include completion of a multipurpose and Head Start center, a road grader, power line construction and water line extensions. The chapter also would like to improve Navajo Route 321. Virginia Benally, chapter secretary/treasurer, noted the need to repair or replace the chapter's trash bin. Roy Lewis, chapter vice president, also noted the need to improve Navajo Route 321. Questions from committee members included whether the chapter has made its funding requests and prioritized its needs. Senator Pinto asked whether the chapter needs a paved road to the lake, but was answered that the Mexican Springs highway takes priority for the chapter. Representative Lundstrom suggested a survey and maintenance schedule for cattle guards. John Brown, Jr., said he was among those who devised the code used by Navajo code talkers and expressed support for New Mexican veterans.

Representative Lundstrom was asked to act as co-chair for the remainder of the meeting.

### **Minutes**

Upon a motion by Representative Vaughn, seconded by Senator Pinto, the committee approved without objection the minutes from the June 2007 meeting of the IAC.

### **State Highway 491 — Status Update**

A panel to discuss the status of the U.S. Highway 491 Project (Highway 491) included Tom Platero, director of the Navajo Nation Department of Transportation; Judy Willetto from the Navajo Nation Division of Natural Resources; Patricio Guerrerortiz, deputy secretary for programs and infrastructure, New Mexico Department of Transportation (DOT); Hugh Perry, assistant general counsel, DOT; and Steve Harris, chief engineer, DOT. Mr. Perry said the agreement between the state and the Navajo Nation is "95%" complete for Highway 491. An easement for the DOT from the Navajo Nation is now at the Bureau of Indian Affairs (BIA) for review and approval. Concerns were raised that funds could be diverted if the project is not implemented in the near future, despite the fact that the project has a \$125 million appropriation in Governor Richardson's Investment Partnership (GRIP) Program. Despite possible funding shortfalls due to the increase in construction costs, the DOT is committed to the Highway 491 Project. If the state and the Navajo Nation can agree to the terms and conditions of the highway easement, construction may begin as soon as spring 2008 and be completed in three years. The northern portion from Sheep Springs to Shiprock will be the first to be constructed, as the design process is much further along. The southern section is more complicated, in part due to right-of-

way issues. Mr. Platero agreed that the state and the Navajo Nation are close to agreement on the terms and conditions of the easement agreement and commented on the need for this project. Ms. Willetto commented that the legislative approval process is complete for the northern portion; all work has been completed except for the terms and conditions for the easement. Mr. Guerrerortiz noted that the design work for the project is virtually complete. Mr. Harris said the recovery of cultural assets is more complicated in the southern portion; the cultural asset recovery for this project will be the largest archaeological recovery in New Mexico history.

Questions centered on the construction, including use of the existing road bed and safety features on the road bed such as "rumble strips" on the side and a six-foot shoulder to accommodate pedestrians who use the road. Senator Lovejoy said that the Navajo Nation Council should be clear on how far the project is going, as costs go up for every year of delay. She asked for the department to provide the committee with information on how much the Navajo Nation has contributed to the project as well as the amount of federal allocations. Mr. Harris noted that costs for the road have gone up 25% over the past two years — half of the cost increase due to a cost upsurge after Hurricane Katrina — and the state has already invested \$17.5 million. Representative Begaye noted that people's lives are being lost on the road between Gallup and Shiprock and opined that the delay on the road construction project can be seen as punishment to the Navajo people; nothing has moved since the original appropriation of \$125 million in GRIP I. He said he has asked the BIA, Navajo Nation, DOT and Shiprock to streamline the project as quickly as possible, and still the project did not make the deadline for applications. The talking stages have continued way too long. Mr. Guerrerortiz said there is legitimate concern that delays could cost money so that the project cannot be completed as designed; there is a finite volume of money. Other committee members asked about ownership of the project. The DOT projected a cost of \$220 million for the project. Agreements as they currently stand have the state owning the project, but without title to the property. Because the land on which the road is being built is reservation land, the state must obtain an easement onto the property. In the long term, the state will need to figure out how to maintain the improved highway.

Upon a motion by Senator Lovejoy, seconded by Senator Pinto, the committee voted without objection to request the state and the Navajo Nation to give an update on the status of this project at the committee's August 13 meeting at the Alamo Chapter of the Navajo Nation and provide a copy of the final terms and conditions of the road agreement.

### **Navajo-Gallup Water Pipeline — Status Update**

Lance Allgood, executive director, City of Gallup Joint Utilities District, reviewed recent congressional hearings on the Gallup-Navajo Water Pipeline Project in which Representative Lundstrom played a significant role. The pipeline will cost \$800 million, but the federal government will fund three-fourths of the money. Portions of the pipeline will pass through Window Rock and Fort Defiance in Arizona and some of the water will go to the Jicarilla Apache reservation. Representative Lundstrom talked about the congressional hearings and her role in the 15-year planning process that led to recent agreements between the state and the Navajo Nation. At the hearing, the Department of the Interior opposed the project, saying it was too expensive and the department had too little input. However, project proponents had minutes from



meetings over the past 16 years in which the Department of Interior participated. It appears that the congressional leadership will pressure the Department of Interior to move along with the project. Both of the state's senators did a "great" job, she said, and suggested downloading their testimony. Navajo Nation President Joe Shirley and several council delegates attended the hearing in Washington. The governor will meet with Gallup officials and state legislators to figure out how to fund Gallup's one-fourth local match. Representative Lundstrom suggested assistance from the Water Trust Fund to help fund the project and for the governor to put more money into the Indian Water Rights Fund. Three big Indian water rights settlements are now in progress, and Representative Lundstrom stated that the state needs to expedite this settlement now and put more money into the Indian Water Rights Fund. By July 17, Gallup has to convince United States senators that it has a way to fund its piece of the project.

John Leeper, Navajo Nation Department of Water Resources, commented on the lack of project support by the Department of Interior and Arizona. Mr. Leeper updated the committee on a number of technical aspects of the project. Phase I of the project began a year ago with drilling at Twin Lakes. The project is funded and rights of way have been acquired, but Gallup needs approval from the New Mexico Finance Authority to spend money for phase 2, which goes from Gallup west to Manuelito. Design on phase 2 is 90% complete. The last phase will connect Twin Lakes' well to be distributed either east or west. The Navajo Nation is 100 yards from the Gallup city limits. The city needs to get a "boardman connection" — a bypass road near the golf course. Now, for the first time, Gallup has city water. It has been looking for alternative water resources. By the year 2045, demand will be too high for the current project. Myron Armijo, the tribal liaison with the Office of the State Engineer, said he fully supports the Navajo water settlement. In 2005, he was on a tour of Window Rock with Bill Hume of the Governor's Office, during which they were told that the project could start soon.

Comments from the committee included questions about the state legislation, overall direct costs and cost-sharing by the involved parties, involvement of the Indian Health Service, pressure to make higher standards and use of Gallup's 40-year-old pipeline, and distribution of water to surrounding Native American communities. Representative Pena and Senator Rainaldi questioned the numbers reported for the operating budget. Mr. Armijo said that the chapters that surround Gallup will have water and that the capacity for those chapters is included in the figures for the trunk line. The chapters are part of the estimated demand and are included in the Navajo Tribal Utility Authority (NTUA) connections. Discussion moved on to the Cutter lateral, which is to be built by the year 2022, and to the cost of the water to Navajo users. For Navajo people there is no capital repayment. NTUA will set rates and allocate costs, although NTUA has one of the highest costs of water in New Mexico at present.

Upon a motion by Senator Ryan, seconded by Senator Rainaldi, the committee voted without opposition to sponsor a joint resolution in the next legislative session in support of the Navajo-Gallup Water Pipeline Project. Upon a motion by Senator Ryan, seconded by Senator Rainaldi, the committee voted without opposition to write a letter to the House Natural Resources Committee and to the Senate Energy Committee expressing its support of the Navajo-Gallup Water Pipeline Project. Upon a motion by Senator Ryan, seconded by Senator Pinto, the

committee voted without opposition to write a letter to the Water Trust Board, urging it to prioritize funding for the Navajo-Gallup Water Pipeline Project.

### **Navajo Nation Division of Social Services — Funding Request**

Members of the Navajo Nation's Division of Social Services came to the committee with a request for funds, since the present allocation from the New Mexico Children, Youth and Families Department (CYFD) will not be increased despite the fact that there is an increase in the caseload for social services. Cora Phillips, executive director, Division of Social Services, Navajo Nation; Don Benally, regional director, Eastern Agency, Division of Social Services, Navajo Nation; Nancy Evans, regional director, Shiprock Agency, Division of Social Services, Navajo Nation; and Lucinda Morris, regional director, Fort Defiance Agency, Division of Social Services, Navajo Nation, addressed the committee on this topic. Representatives of the Navajo Nation are asking for increased funding from the state of Arizona as well. The eastern Navajo region, including Crownpoint, is the biggest region in need and extends services to seven counties. The services include protective services for children and adults. Of greatest concern is the Alamo Navajo community, because it is so remote, followed by Tohajiilee. Data from 2006 show that there are 400 cases in Alamo for persons over the age of five or six years old but less than 18 years old. There are 100 cases at the Fort Defiance Agency and 300 cases at the Shiprock Agency. The request is for a total of approximately \$500,000 in addition to the present level of funding to cover salaries, benefits and costs for vehicles for areas to be served. Ms. Morris observed that New Mexico needs to carry its full share of the financial cost of these programs for New Mexicans; notification has been received that federal funds will be cut by \$4.6 million in the coming fiscal year. The low level of funding and undesirable working conditions have resulted in large turnover in staff. The State of New Mexico hires people away from the Navajo agencies with better salaries and overtime pay.

Representative Salazar advised the social services representatives to take their case to other pertinent committees so that they could be included in the budget more easily. Senator Adair asked about funding from Arizona for the Fort Defiance Agency and suggested the representatives take these facts to such committees, noting that per capita aid from Arizona is higher than that from New Mexico. Senator Lovejoy suggested asking for general fund resources from the Navajo Nation. Representative Begaye asked about whether CYFD includes Native Americans in its head count for applying to the federal government for funding. The representatives answered that the CYFD does cost accounting and reimburses the Navajo Social Services Division up to its budget limit.

### **Fort Wingate — Status Update**

James Bearzi, bureau chief of the Hazardous Waste Bureau, Water and Waste Management Division, Department of Environment, gave the committee a brief history of Fort Wingate and the cleanup of the property following its decommissioning. The U.S. Army "withdrew" the fort in the late nineteenth century and used it to store materials from munitions testing, propellants and explosives. There were 100 years or more of unregulated management of the fort, with contaminants threatening the water supply of Gallup. Mr. Bearzi described the various types of hazardous materials that may be found on the site. It has not been possible even to check the site in some places because of unexploded ordnance. There are two large landfills with asbestos in them. The state brought the tribes and the Army to the table and went through the permit line by line, reaching agreement for a cleanup timetable. The final permit was issued on December 1, 2005, and the tribes have gotten many concessions through the process that would not otherwise have been possible. There was tribal consultation in the process for the first time in the country. With this agreement, the tribes and the Army can issue a plan for the community, and Mr. Bearzi reviewed the closure requirements and permit conditions. The role of the Department of Environment is not to approve the cleanup; that role is left to the agreement between the Army and the tribes. For every part of the work plan, the Army must certify that it has consulted with the tribes, and if the tribes do not agree with an element, then they have to explain why. There are civil penalties available up to \$10,000 and criminal penalties up to a second degree felony. The cleanup decisions made today affect the tribes forever. He said he is proud and grateful. The tribes came up with the priorities for cleanup rather than having cleanup imposed by the state. Still, the agreement can be enforced by the state.

Edward Wemytewa, the Fort Wingate coordinator from the Pueblo of Zuni, discussed the "unqualified success" of the cleanup at the fort. All of the fort will be transferred to tribes when cleanup is complete. Mr. Wemytewa described the negotiation that has gone on over the past few years between the Pueblo of Zuni and the Navajo Nation regarding the ultimate disposition of the Fort Wingate property. The negotiations appear to have been put on hold pending the outcome of last year's elections. Charles Damon, Navajo Nation Council delegate, had been on the team dealing with this issue but indicated that the Navajo memorandum of understanding team has not yet been reappointed. Councilman Damon indicated that the pueblo and the nation are in disagreement over which portions of the Fort Wingate property should be turned over to which tribal entity. Derrith Watchman-Moore, tribal liaison with the Department of Environment, questioned the prioritization of certain parcels within the cleanup site. Senator Pinto noted that SJM 40 passed 20 years ago and little has been done. Mr. Wemytewa and Councilman Damon commented on the areas of disagreement between the two tribal entities.

Following the presentation regarding the status of Fort Wingate, Representative Begaye recessed the meeting at 4:26 p.m.

### **Tuesday, July 10 — Churchrock Chapter, Navajo Nation; Red Rock State Park**

The second meeting of the IAC for the 2007 interim was called back into session by Senator Pinto on Tuesday, July 10, 2007, at 10:16 a.m. at the chapter house of the Churchrock Chapter. Senator Pinto asked Representative Pena to act as co-chair for the morning's meeting. Following introductions by committee members, staff and members of the audience, Cal Curley read a statement on behalf of Congressman Tom Udall. Representative Udall indicated that the federal Radiation Exposure Compensation Act (RECA) is inadequate to compensate all of those who were victims of illnesses contracted through uranium mining. Any resumption of uranium mining must meet the highest standards of public health and environmental safety. He worked to eliminate an unnecessary \$30 million subsidy for the uranium industry that would have encouraged in situ uranium mining in an area near the drinking water of the eastern Navajo Nation, compromising the health and safe water access of thousands. He said "we must remain vigilant to ensure that environmental and public health are not compromised as uranium mining occurs".

### **Churchrock Chapter, Navajo Nation — Status Update**

Robinson Kelly, vice president of the chapter, and Alice Largo, community services coordinator, discussed the chapter's opposition to the proposed resumption of uranium mining and mentioned the importance of a recent Southwest Research and Information Center report on the health effects of past uranium mining practices. Mr. Kelly went on to say that the community makes its living, despite tailing ponds and problems with unremediated mines. Larry King, a chapter member, said a former uranium milling site is near his home and a lot of waste is still in the area. He indicated that surveys in the area have shown heightened levels of radiation along the highway where uranium ore had been trucked to the mill. There have been no remediation efforts along the highway, and winds in the areas spread contamination. The chapter strongly opposes new uranium mining methods and the state should examine new projects in light of the contaminants left behind. He said the state facilitated the project and should therefore be responsible for the cleanup. Teddy Nez, who worked for Kerr McGee and United Nuclear, said he got cancer from living near uranium mines. His home is located just downstream from a former uranium mine and is the site of recent cleanup efforts by the federal Environmental Protection Agency (EPA). Mr. Nez reviewed the need for comprehensive health studies of the effects of uranium contamination and the need for long-term protection. He described the recent EPA cleanup activities and urged that the job be completed. There should be no new uranium mining activities until the contamination from past uranium mining and milling have been fully addressed. Scotty Begaye, Jr., a Churchrock resident and former United Nuclear employee, also spoke against any kind of mining. When he worked on a cleanup site, he was told to bury potentially radioactive items rather than removing them. The cleanup was only on the surface and was therefore very superficial. He added that the old Churchrock mine site has trash pits that were just barely covered up, not remediated. He cautioned that uranium has been spilled along the highways as part of the "cleanup" and may still endanger the lives of pedestrians along the highway. Mr. Kelly described how members of the chapter use the sheep that graze on lands contaminated by uranium waste and reiterated the chapter's opposition to new uranium mining activity.

### **Tour of Uranium Mining Sites**

The committee spent the rest of the morning touring two mine cleanup sites and was accompanied by Bill Brancard, director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department, and Bill Olson, bureau chief of the Ground Water Quality Bureau of the Water and Waste Management Division of the Department of Environment. Mr. Brancard and Mr. Olson gave a brief history of the demand for uranium, beginning in the post-war era for weapons production and continuing through the 1980s, when the demand for uranium collapsed. For the past 25 years there has been no new uranium mining in New Mexico. All mills in New Mexico are now closed, and the federal Uranium Mill Tailings Radiation Control Act (UMTRA) requires reclamation for uranium mills as it does for nuclear materials. There are some Superfund sites and some quasi-Superfund sites; many sites have not yet been dealt with at all. Committee members visited the proposed site of an in situ uranium mining site located across the highway from a former mill site and adjacent to the home of Mr. King and his family. Members also visited the site of a recent EPA cleanup and a Superfund site on lands that include the home and family lands of Mr. Nez. The cleanup effort included the removal of topsoil around several dwellings while the actual mining and milling stream located upstream in a wash was left unremediated.

The second meeting of the IAC for the 2007 interim was reconvened by Representative Begaye, acting co-chair, at 12:45 p.m. in the auditorium at the Red Rock State Park.

### **Legacy of Uranium Mining and Milling — Status Update**

Mr. Brancard and Mr. Olson were joined by Juan Velasquez, vice president of environmental and regulatory affairs for Strathmore Minerals Corporation, and by Stephen B. Etsitty, executive director of the Navajo Nation Environmental Protection Agency, for further discussion of the legacy of uranium mining.

Mr. Brancard indicated that his agency can deal principally with abandoned uranium and coal mines. He reviewed the history of uranium mining in New Mexico, including the location of uranium milling and mining sites, the decline of uranium mining in the 1980s and 1990s and the renewed interest in uranium mining due to a tenfold increase in uranium prices. Mr. Brancard noted that one problem in this area of inquiry is that there is not a comprehensive set of laws requiring reclamation of mine sites, although UMTRA does address the remediation of tailings at milling sites (nine of which are in New Mexico). He noted that all of the milling sites have been decommissioned. If the work is being done on behalf of the federal government, as in the case of production of uranium for nuclear weapons, the federal government pays for the cleanup. Otherwise, when the uranium is being used for private purposes, such as to fuel nuclear power plants, the company must pay for any cleanup. The EPA may participate in cleanup activities through the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), although not necessarily only at Superfund sites. He also noted that in the context of the coal mining industry, companies are required pursuant to the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) to pay \$.35 per ton for the cleanup of coal mine sites. Pursuant to the Mining Act, mines that had two years of production after 1970 were required to submit and implement a remediation plan. Therefore, a number of the later uranium mines are

subject to the Mining Act. Finally, Mr. Brancard explained that the Mining and Minerals Division has commenced a study to identify uranium mining sites in New Mexico and to determine which sites need to be cleaned up and the extent and type of the required cleanup.

Mr. Olson explained that the state has concurrent authority under the New Mexico Mining Act and the Water Quality Act to regulate mining. At the mill sites, the Department of Environment has a role regardless of any other jurisdictional issues. The problems of the mill cleanup originate from the lack of any regulatory requirements for remediation when the mines were first dug in response to the demand for uranium in the 1950s post-war build-up. Mining waste was discharged into arroyos and drained into water. The New Mexico Water Quality Act, passed in 1974, regulates pollution. The Water Quality Control Commission created by that act adopted specific regulations for water pollution focused on reclamation activities in uranium mines in 1995. In 1992, the EPA changed its regional governance and assigned the Navajo Nation to Region 9 for administration, while the rest of New Mexico remained in Region 6. The effect in checkerboard areas of New Mexico is that a determination has to be made for each site as to what region the EPA is responsible for cleanup. The EPA has a broader scope of power than does the state, which is limited to water quality issues. Sources of contamination from uranium mines are from dewatering, waste rock piles, windblown sediment and transportation of ore. At the mills themselves, tailing ponds and windblown tailings are the primary source of contamination. Under the EPA, there are two sites remaining in New Mexico for formal Superfund cleanup — the Homestake mill in Milan and the Northeast Churchrock mill. Under state law, there are four projects with contaminated ground water. Both having a "responsible party" for the cleanup and the land ownership status (i.e., whether the land is part of the Navajo Nation or not) remain as obstacles to cleanup. There is also a need to establish the background level of naturally occurring radiation in order to be able to establish sound cleanup standards. Finally, the truth of the matter is that remediation of sites contaminated by uranium mining and milling activities is difficult and costly.

Mr. Etsitty said the Navajo Nation has several offices dealing with uranium mining and milling, although they are aligned with the Department of Environment and the EPA. The Navajo Nation believes it has been excluded from much of the decision-making process. The legacy for the Navajo Nation is that it has had plenty of activity for purposes of national defense and did much for the federal government during the Cold War in stockpiling nuclear weapons. However, the Navajo Nation is left with a sad legacy after state and federal decision-making — incomplete cleanup of critical sites. The nation has been involved in 1,300 mines from Flagstaff to Lake Powell and those mines have an impact on the United States' defense and nuclear programs. For much of the past 15 years, though, the Navajo Nation Abandoned Mine Program has been at work, closing off mine entrances and remediating some areas of tailings. Now some of the sites are threatened by erosion. Of the 1,300 locations, only a small percentage have been completely cleaned up. This is because at least 10,000 acres are contaminated by uranium, on some sites machinery is unable to reach the polluted area and ground water continues to pollute other areas. The Navajo Nation is working to be able to deal with the problem of contamination from uranium mining, including establishing standards for cleanup.

Mr. Velasquez admitted that there are problems. The Mining Act of 1993 has an abandoned mine provision for cleanup, but no funding. The act could be modified so that money could be earmarked for cleanup in the future — similar to uranium mills where \$.10 per pound of uranium goes for cleanup. Mr. Velasquez called for a collaborative effort between the industry and governmental entities to deal with contamination issues.

Committee members asked whether the sites would ever be cleaned up. Some suggested prohibiting the opening of any new mines until the old sites are cleaned up. Senator Ulibarri said he supports uranium mining, as New Mexico may be able to mine 500 million tons of material worth \$135 per pound. The industry can bring jobs. The old industry is different from current energy providers; there is new technology. He noted that most of France's industry is powered by nuclear power. Discussion ensued on who is responsible for changing the standards to protect New Mexicans. Senator Ryan suggested that the Navajo Nation and New Mexico look for new money for cleanup; perhaps companies would be happy to pay in order to come back. Representative Pena said he would like to see a state version of the federal Superfund provisions, i.e., funding a mechanism for cleanup of abandoned sites. Senator Martinez said he had introduced legislation for a \$2 million appropriation and it was vetoed. Representative Salazar asked whether the Navajo Nation holds all the mineral rights in checkerboard areas. On reservation lands, the Navajo Nation owns both the surface and the mineral rights. In the checkerboard area off the reservation, much of the land is subject to private mineral rights. In such areas, the BIA can overrule the Navajo Nation because Navajo title goes only to the surface rights, whereas mining permits are for the land beneath the surface. The EPA could overrule the Navajo Nation without its consent. However, in this case, all of the lands near Churchrock are trust lands, not owned by allottees and the Navajo Nation has not been involved. Representative Salazar asked whether the New Mexico Mining Act requires cleanup of a mine, and he was told that new mines are required to submit a reclamation plan and a bond to cover state costs if the mine owners walk away. The department said it has managed to hold some companies responsible under the New Mexico Mining Act.

Representative Lundstrom said she sees two issues: cleanup and new permitting. She is not comfortable with the cleanup efforts that have been implemented in the Churchrock area. She requested a matrix showing the responsibilities of the state, federal government and tribal responsibilities for chemicals, ground water and soil. She asked the committee members to work together to set up an infrastructure that is important to the community, perhaps by looking to the New Mexico Mining Act for places to require local input, incentives for nearby counties and funding under the New Mexico Community Assistance Act. She wants to know what the process is for creating a state version of the Superfund Act (CERCLA). A joint session with the interim Radioactive and Hazardous Materials Committee was denied by the Legislative Council. However, the committee's bills regarding waste cleanup will be presented to that committee for endorsement, too. Representative Lundstrom moved, Senator Martinez seconded and the committee voted without objection to request the Legislative Council to grant per diem for members of the IAC to attend a meeting of the Radioactive and Hazardous Materials Committee for discussion of uranium mining. Representative Vaughn asked Mr. Velasquez about instituting a moratorium on permitting for new uranium mines while cleanup gets underway, and he

responded that industry will find a way to mine, whether in New Mexico or elsewhere. Senator Lovejoy expressed her willingness to work with the industry, but said she is upset by the exploitation of people for many years as they attempt to live with mining in people's backyards. She observed that uranium mining puts ground water at risk. While she is not necessarily in favor of shutting out the uranium industry, the technology is unproven and mining should be done where people do not reside, not in their backyards. Senator Pinto said he has represented this district for the past 31 years and sees that there is little information still on the health effects of mining. Representative Begaye suggested getting copies of agreements between Arizona and the Navajo Nation to study as potential models. Representative Lundstrom moved, Representative Vaughn seconded and the committee approved without objection that the committee request closer coordination between the New Mexico governmental agencies and the EPA.

### **State Regulation of Present and Future Uranium Mining — Update**

Mr. Olson and Mr. Brancard discussed the future of mining in New Mexico and the ways in which state laws and regulations may affect mining activities, including exploration, conventional mines, in situ leaching (ISL) mining and milling or processing sites. They explained that the New Mexico Mining Act applies to conventional exploration and processing. For exploration, proponents must obtain a permit from the Mining and Minerals Division. The division consults with other state agencies, such as the Department of Game and Fish, the Office of the State Engineer, the Economic Development Department and the Cultural Affairs Department. There is not, however, a requirement for a public hearing. Mining requires interagency cooperation for ground water discharge permits as opposed to permits for operating a mine. They described the permitting process and then said there are no pending mining permits to issue, only the two existing permits, both of which are currently inactive. Conventional underground mining requires a permit from the Mining and Minerals Division to ensure proper mine closure and a ground water discharge permit from the Department of Environment. Where the federal Nuclear Regulatory Commission (NRC) has jurisdiction, such as for ISL operations, the proponents are exempt from the New Mexico Mining Act. Mr. Brancard described the current level of uranium mining activity in the state. There have been a number of inquiries but no applications for ISL operations. Mr. Olson reviewed the impact of the Water Quality Act on uranium mining operations. When an application is filed for a discharge permit, there is public notice, technical review and a public hearing if required by the secretary. The public participation process is lengthy, as governments consider both sacred sites and background water quality. Remediation is required, but questions remain whether remediation requirements might be for the easiest or the most strict standards, whether an aquifer can be remediated to preexisting conditions and how much money it takes to remediate adequately. Any discharges from mining operations are supposed to meet federal Safe Drinking Water Act standards. In other states, mining companies have agreed to one standard and returned to the state to request (and receive) a lower standard for remediation. There are presently no new uranium mining permit applications in New Mexico, but the Mount Taylor mine has applied for a renewal and the Rio Alto mill has applied for renewal to cover closure activities. If the Mount Taylor mine is to be reopened, the mine will need to be dewatered and discharged effluent will be required to meet state standards. The secretary will determine the extent of public participation to be required in the event such an application is filed. There have been discussions regarding applications for ISL operations but no



applications have been filed. Protection of underground aquifers is a primary concern and there is a question as to the background levels of radiation in existing aquifers.

Senator Adair queried which ISL technology is experimental or proven. The panelists said it is proven to produce uranium but the effects on ground water aquifers are unclear. There is concern about how to establish background levels of radiation and whether ISL operations can maintain those levels. Senator Ulibarri asked how sacred sites are defined and how the existence of such sites could be established. Senator Rainaldi expressed his disappointment in how the Northeast Churchrock site has been handled and said that both citizens and legislators must be better educated on this topic.

### **Public Comment**

Comments were taken from members of the audience and are summarized as follows.

Jim Store from the Office of the President/Vice President, Navajo Nation, gave a brief review of the history of uranium mining on the reservation. He distributed a statement prepared by President Shirley regarding the proposed resumption of uranium mining. Mr. Store stated that the Navajo Nation has banned uranium mining on its land, that the nation is united on this issue and the Navajo Nation is unwilling to negotiate on this issue.

George Arthur, the San Juan Chapter delegate to the Navajo Nation Council, expressed concern about the legacy of uranium mining, noting that the Navajo Nation still lives with what happened in 1949 and the years thereafter. There are children with disabilities and, even though federal agencies were aware of the effects of the mining and Congress passed RECA, funds have not been made available and affected people have been left uncompensated.

Milton Yazzie from Black Falls, Arizona, indicated that open pit mines in his area had been "reclaimed" five years ago, but the ground water is still contaminated. They have been working with EPA Region 9, but still need to haul bottled water for domestic use. He decried the pollution of water and land and the loss of three family members over the past year due to cancer from uranium and arsenic from so many open pit mines.

Candace Head-Dylla, a resident of Milan, said she lives right below the mines and the Homestake mill and has been talking about the uranium industry's legacy for 30 years to no effect. She asked the committee members to consider the sacrifices made by the community and whether people will ever be compensated adequately. The tradeoff for the community was to get free water for 10 years, but now the community pays for the water it used to get for free. Her community continues to have to deal with the legacy of uranium mining. Legislators should not make New Mexico a wholly contaminated state.

Benjamin House, a member of the Eastern Navajo Allottees Association, said the community is faced with a staggering unemployment rate of more than 50% and the need for jobs for young people. The communities should work together and not be pulled apart by this issue.

Mr. Nez thanked the committee for setting wheels in motion and requested: 1) that it change reclamation requirements; 2) that it incorporate chapters into requirements for tribal consultations; and 3) that there be better coordination with the federal government and EPA; for example, streamlining the process for determining whether land falls under Region 6 or Region 9 in the EPA administration.

Tom Manningson, who works in the Eastern Navajo Agency, said the water quality and health impacts should be studied. People are sick and suffering.

Norman Brown talked about uranium as having not only an economic impact from use of the land, but also an impact on spiritual and cultural values of the Navajo people and on water, the holy mother. He suggested requiring an independent review of the situation. A return to uranium mining would be devastating for the Navajo people, and actions by McKinley County supporting the resumption of uranium mining is disrespectful of the Navajo people.

Chris Shuey from the Southwest Research and Information Center said problems need to be addressed on dozens of sites. The New Mexico Community Assistance Act should fund what has been done in Churchrock at other communities, too. The legislature should tell the federal government to pay for the damage to this land done by federal policy between 1940 and 1960. Instead of accepting corporate irresponsibility, the state should put in place a moratorium on uranium mining until the legacy problems are solved. Given the legacy of its activities in the past, why should people believe in the promises of the uranium industry today?

Paul Robinson, who lives in Senator Dede Feldman's district, assured the committee that there is plenty of uranium to mine. However, New Mexico's northwest region should be used as a solar and wind resource. HRI is the only corporation to file an application for mining thus far, and it will be three to five years at the earliest before it can succeed and open a mine. In the meantime, other resources should be developed. New Mexico should not be exploited as a colony for its natural resources.

Andrew Leo Lopez from Tohajiilee said this area depended on regulators to protect residents from the adverse impacts of the uranium mines, and that did not work. Uranium mining should be banned. There has been no examination of technology for uranium mining, particularly on mining's effect on the water supply. He later commented that it is difficult to estimate and forecast the medical costs and pain and suffering resulting from uranium mining, even if one can reasonably estimate reclamation costs.

Lemna Morgan recommended that the legislature fund a bill for health that addresses the concerns of all the sick people in the northwest area and undertake a comprehensive health study. As a resident of New Mexico and the Navajo Nation, she said she believes adequate compensation should be made and that better research be done. She said that it is not only uranium that affects people, but everything that has to do with radium.

Ernest Becenti, Jr., McKinley County commissioner, acknowledged that uranium mining

is a big, sensitive issue. Driving motor vehicles can be dangerous, as can be eating ice cream. People should look at this issue from an economic point of view. The board of commissioners passed a resolution supporting economic development of all kinds, including coal mining and natural gas as well as uranium mining. McKinley County is a poor county with high unemployment; uranium mining can bring needed jobs and revenue.

### **Committee Recommendations**

Senator Lovejoy recommended the following actions: 1) legislation be drafted requiring public notice and hearings prior to the issuance of permits for exploratory drilling; 2) regulating the distance from water wells, livestock ponds and residences for mining activity; 3) funding for regulatory agencies should not be tied to the number of permits issued and industry should not be paying for studies that appear to be neutral; 4) combine regulatory agencies so that a single agency is charged with oversight of uranium activities; the current bureaucracy is a trail of confusion; and 5) there is a need for a moratorium on uranium mining activities.

Representative Lundstrom moved that the committee draft a letter to Secretary Shendo asking the Indian Affairs Department to develop a strategy for the cleanup of Churchrock involving the New Mexico Department of Environment, Energy, Minerals and Natural Resources Department, chapter officials and Congressman Udall so that the cleanup can move to the next phase. The committee should direct Secretary Shendo to be the committee's liaison on uranium. Representative Pena seconded the motion and it passed without objection. Representative Lundstrom also moved that the committee draft a comprehensive health study bill, starting with Churchrock as a model for other chapters and including an appropriations request. The motion was seconded by Senator Pinto and passed without objection. Representative Lundstrom moved that the committee write a letter to Secretary Ron Curry requesting that the Department of Environment assess the sites each year as to the degree of cleanup progress made or required. The motion was seconded by Representative Vaughn and passed without objection. Finally, Representative Lundstrom moved that the committee create a subcommittee to examine how industry can help the community and return to the committee with a report. Members of the committee would include Representatives Vaughn, Pena, Begaye and Lundstrom and Senator Ulibarri.

Senator Lovejoy requested that staff draft a memorial calling for a five-year moratorium on uranium mining to be presented at the November meeting. Representative Lundstrom requested that staff write to Secretary Shendo requesting that he be available and that he also assign Indian Affairs Department staff to be present at every meeting of the IAC.

### **Public Comment**

Following its discussion of recommendations, the committee returned to public comment in order to hear from remaining members of the public still in attendance.

Floyd Stevens presented a resolution from the Native American Church of Navajoland strongly opposing uranium mining in and around Mount Taylor and requesting formal tribal consultation.

Robert Tohe from the Environmental Justice Program of the Sierra Club talked about working with the U.S. Forest Service in a Ninth Circuit Court of Appeals case on the designation of land as sacred. In Arizona, a pending lawsuit argues that the Religious Restoration Freedom Act applies when mining desecrates a sacred site. Tribes in New Mexico are now looking at that case for potential protection of Mount Taylor.

Mitchell Capitan, representing ENDAUM, said he has heard about contamination in Crownpoint. He worked for Mobil Oil in 1980 and it was unable to restore the aquifer to its original condition. Water is a huge concern, especially in a period of drought.

Mr. Yazzie said that in 1970-71, when mining was being developed, a bulldozer backed over a hogan with his grandmother in it and killed her.

Mr. King expressed concern, especially to Senator Ulibarri, that HRI's new mine proposal makes false promises and that the people are being left out of the discussion. The environmental impact statement has no reclamation plan. His family is slated to be relocated but they are determined to stay.

Ms. Morgan said people here respect the sacred sites and are not leaving. When the people practice their religion, they are doing their duties. Other areas should be explored for economic development, not just uranium mining.

Ms. Adeky from Ramah Navajo said she has been working with the Eastern Navajo Nation for the past two years and heard about all the problems. There is a good deal of oral history on the issue. It is time to talk about the future for the children's sake.

Following the completion of public comment regarding the resumption of uranium mining, Representative Begaye recessed the meeting at 5:55 p.m.

### **Wednesday, July 11 — Manuelito Chapter, Navajo Nation**

The second meeting of the IAC for the 2007 interim was called back into session by Senator Pinto on Wednesday, July 11, 2007, at 9:28 a.m. at the chapter house of the Manuelito Chapter.

### **Manuelito Chapter, Navajo Nation — Status Update**

Milton Davidson, president of the Manuelito Chapter, spoke to the committee about the chapter's priorities, including building a casino, wastewater disposal and powerline construction. The roof at the chapter house has been renovated, but additional funds are needed for further renovation. Community Services Coordinator Pauline McCabe gave a PowerPoint presentation on the current activities of the chapter. The chapter is working toward being certified by the Navajo Nation pursuant to the Local Governance Act. To this end, the chapter is working to put into place the five management system policies and hopes to adopt a land use plan by the fourth quarter of the current year. Recently, the chapter has completed a number of capital outlay

projects, including paving the chapter house parking lot, repairing the chapter house roof, completing 44 bathroom additions and working on a powerline extension. She said that education is important to the community. The Manuelito Chapter participates thoroughly in planning and she pointed out that students have been envisioning changes, have made murals of their visions and have requested a skate park, a game room and a playground as well as a veterans' building.

Representative Lundstrom asked about the memorandum of understanding among the Jicarilla Apache Nation, Gallup and the chapter regarding the extension of water lines. Representative Begaye asked about BIA-mandated land appraisal processes.

### **Implementation of Amendments to the Indian Education Act**

Representative Begaye and Senator Lovejoy briefed the committee on developments in Indian education from the most recent legislative session, noting that some 60% of New Mexico schools with high Native American populations did not make "adequate yearly progress" (AYP). When the three-tiered licensure plan was adopted raising salaries for teachers according to their academic training, Native American students still continued to fail. Legislators looked for ways to subsidize Native American students and passed the Indian Education Act (IEA) as a way to recruit more teachers and include the language and cultural pieces that are so important for New Mexicans and so overlooked in federal law. Now, with changes to the IEA, higher education is also involved in improvements for Indian education. Representative Begaye said his goal is to get \$10 million for Indian education and enhance the collaboration between schools and tribal members.

Superintendent of Education Tommy Lewis from the Navajo Nation addressed the committee, congratulating legislators on having passed and improved the IEA. The Navajo Nation has adopted the Navajo Sovereignty in Education Act, which looks to establish a department of education like the state's Public Education Department (PED) to regulate student assessment and get control of education for native students. The Navajo Nation has 258 schools with 100,000 students in grades kindergarten through 12. He said laws should be clear that, at least at the school level, language and cultural education are essential. Language and culture emphasis have been seen to help schools attain AYP in southern Utah. The Navajo Nation needs data from the PED so that it can better track students here. The Navajo Nation received a grant to implement language and culture programs, but it got behind in spending the grant, so the money was returned. Superintendent Lewis said it is important for appropriations to be made to PED or to the specific chapters but not to the Navajo Nation for educational programming. The Navajo Nation Board of Education made a formal request to be part of the selection process for the new superintendent of the Gallup-McKinley County School District. Helen Creamer said that the Navajo Nation wants to be involved in the new search for the district superintendent. The search committee and process have been tight. The search has been only internal, she said, and she expressed disappointment in the process thus far. Upon a motion by Representative Begaye, seconded by Senator Lovejoy and passed without objection, staff was requested to write letters to the Central Consolidated School District and the Gallup-McKinley County School District requesting them to include Navajo Nation members in the selection process for new superintendents. Senator Lovejoy requested that the Navajo Nation Education Department and

chapter house representative in the school section get a response to the requests.

Senator Lovejoy asked many questions of the Navajo Nation superintendent. She noted that the state is at the point of strengthening the IEA, but asked what the Navajo Nation is doing to help students meet AYP. She requested a list of the Navajo Nation's educational goals. She said that if the Navajo Nation is still failing, and data and tracking are not there, maybe the design is just not right. The superintendent said that things are improving, but often not as quickly as a legislator would prefer. Discussion followed on state appropriation reversions that result from money getting bogged down in the Navajo Nation bureaucracy. Representative Begaye suggested channeling money a different way, perhaps through the Office of Management and Budget or through grants to the PED. An alternative exists in channeling funds to the PED, which then funnels the money to chapters through a memorandum of understanding.

Dr. Catherine Cross Maple, deputy secretary of public education, and Assistant Secretary for Indian Education Nancy Martine-Alonzo, presented to the committee on changes to the IEA. Sarah Adeky, the Navajo Nation representative to the Indian Education Advisory Council (IEAC), also spoke and gave the committee the regards from the chair of the council, Dr. Larry Emerson. Dr. Cross Maple explained that she is in charge of all the divisions regarding learning and accountability programs, including the rural literacy initiative. That initiative required the PED to select a single nonprofit that was able to match the legislative appropriation. Ms. Martine-Alonzo reported that IEA implementation is a year ahead of schedule and noted that it is invaluable to have tribal educators and the IEAC. She also noted that rules are being promulgated to specify that urban Indian concerns must be taken into account in the educational process. Because of changes in the IEA, the PED is now required to consult with the IEAC before making changes; the council has grown from seven members in 2003 to 14 members, and as of 2007 includes 16 members.

The PED now operates a northwest office, expanding the work of the office and the local area to ensure that native language is part of the educational plan for each school. The PED makes a statewide annual education report — one for each local school district reporting on 11 indicators for tribal students — including achievement, dropout rates, graduation rates and indigenous research. For the first two years, the Indian Education Division of the PED had a problem spending the funds appropriated, but that is no longer a problem. As of July 11, the day of the meeting, all of the money budgeted for fiscal year 2008 had been sent out.

Norman Ration and Keith Franklin spoke to the committee on the importance of including urban Indian students, especially as one-half of the Native American students in New Mexico live in urban areas not contained within a single reservation or pueblo. In Albuquerque, there are 5,500 Native American students — 50% of them Navajo, 27% pueblo and 23% from another 350 tribes. Native American students have high dropout rates and low grade point averages. The issue is not one of sovereignty, but of learning how to partner with tribes. The government-to-government relationship between the state through the PED and the various tribal governments is important. However, the inclusion of representatives of urban Indian populations on the IEAC will help ensure that all Native American children have a culturally appropriate education. Mr.

Franklin was appointed by Dr. Cross Maple as a representative to the IEAC. These two presenters requested a true count of the number of Native American children and requested home school liaisons to become involved with native students by visiting them and encouraging them to attend school. Some 66% of Native American graduates of New Mexico schools still require remedial coursework in college. Some 83% of graduates from Navajo Pines had to have remedial education.

Committee members questioned the presenters and among their concerns were those surrounding the Higher Education Department's awareness of the statutory requirement for the department to work with the PED on Indian education. Upon a motion by Representative Begaye, seconded by Senator Lovejoy, the committee voted without objection to ask the new secretary of higher education to appear before the committee in November.

### **Adjournment**

There being no further business before the committee, the second meeting of the IAC for the 2007 interim adjourned at 1:25 p.m.

Revised: August 2, 2007

**TENTATIVE AGENDA  
for the  
THIRD MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**August 13 - 15, 2007  
Alamo Chapter, New Mexico  
Pueblo of Acoma, New Mexico  
Tohajiilee Chapter, New Mexico**

**Monday, August 13 — Alamo Chapter, Navajo Nation**

10:00 a.m.     **Call to Order**

10:05 a.m.     **Alamo Chapter, Navajo Nation — Status Update**  
—Buddy Mexicano, President  
—Manuel Garcia, Sr., Vice President  
—Edward P. Padilla, Council Delegate

12:00 noon     **Lunch**

1:00 p.m.     **Tribal Roads Workshop**  
—Germaine R. Chappelle, General Counsel, New Mexico Department of Transportation  
—Max Valerio, Chief Engineer, New Mexico Department of Transportation  
—Alvin Dominguez, District 1 Engineer, New Mexico Department of Transportation  
—Larry Maynard, District 6 Engineer, New Mexico Department of Transportation  
—Ron Shutiva, Native American Liaison, New Mexico Department of Transportation  
—Tom Platero, Director, Navajo Nation Department of Transportation  
—Sampson Begay, Chairperson, Transportation and Community Development Committee, Navajo Nation Council  
—Tony Padilla, Jr., Chairman, Roads Committee, Eastern Navajo Agency  
—Paulson Chaco, Planning and Community Development Director, Ramah Chapter, Navajo Nation (Invited)  
—Larry Morrin, Director, Southwest Regional Office, Bureau of Indian Affairs (Invited)  
—Tim Deasis, Deputy Regional Director for Indian Services, Navajo Regional Office, Bureau of Indian Affairs  
—Irvin Bekis, Transportation Division Manager, Navajo Regional Office, Bureau of Indian Affairs



—Mark F. Valenzuela, Director of Government Affairs, New Mexico Finance  
Authority

4:00 p.m.      **Recess**

**Tuesday, August 14 —Haak'u Museum, Pueblo of Acoma**

9:00 a.m.      **Call to Order**

9:05 a.m.      **Pueblo of Acoma — Status Update**

—Jason Johnson, Governor

—B. Gregory Histia, First Lieutenant Governor

—Randall Vicente, Second Lieutenant Governor

10:30 a.m.      **Lingering Concerns Regarding Native American Health Care Delivery**

—Ken Lucero, Chair, Health Committee, All Indian Pueblo Council

12:00 noon      **Lunch**

1:00 p.m.      **Uranium Mining**

—Representative, Blue Water Valley Downstream Alliance

—Representative, Pueblo of Acoma

—Representative, Pueblo of Laguna

2:30 p.m.      **Native American Culture and Tourism Development**

—Travis Suazo, Tourism Development Director/Indian Tourism Program  
Manager, Tourism Department

—Marvis Aragon, Chief Executive Officer, Acoma Business Enterprises (Invited)

3:30 p.m.      **Sky City Tour**

5:00 p.m.      **Recess**

**Wednesday, August 15 — Tohajiilee Chapter, Navajo Nation**

9:00 a.m.      **Call to Order**

9:05 a.m.      **Tohajiilee Chapter, Navajo Nation — Status Update**

—Tony Secatero, President

—Mark Begay, Vice President

—Lawrence Platero, Council Delegate

10:30 a.m.    **Native American Voting Rights**  
                  —Mary Herrera, Secretary of State  
                  —Martin Aguilar, Coordinator, Native American Information Program, Bureau of  
                                  Elections, Office of the Secretary of State

12:00 noon    **Lunch**

1:00 p.m.     **Adjourn**

**MINUTES  
of the  
THIRD MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**August 13-15, 2007  
Alamo Chapter, New Mexico  
Pueblo of Acoma, New Mexico  
Tohajiilee Chapter, New Mexico**

The third meeting of the Indian Affairs Committee (IAC) for the 2007 interim was called to order by Senator John Pinto, co-chair, at 10:50 a.m. in the chapter house of the Alamo Chapter of the Navajo Nation.

**Present**

Rep. James Roger Madalena, Co-Chair  
Sen. John Pinto, Co-Chair  
Sen. Rod Adair  
Rep. Ray Begaye (8/14, 8/15)  
Sen. Dianna J. Duran  
Rep. Justine Fox-Young (8/15)  
Sen. Lynda M. Lovejoy  
Rep. Patricia A. Lundstrom (8/13, 8/14)  
Rep. John Pena (8/13, 8/14)  
Sen. Lidio G. Rainaldi (8/14)  
Sen. Nancy Rodriguez  
Rep. Gloria C. Vaughn (8/14, 8/15)

**Advisory Members**

Rep. Ernest H. Chavez  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella (8/14)  
Rep. Nick L. Salazar (8/14, 8/15)  
Sen. David Ulibarri (8/13, 8/14)

**Absent**

Rep. Manuel G. Herrera  
Sen. John C. Ryan  
Rep. W. C. "Dub" Williams

Sen. Ben D. Altamirano  
Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Sen. William E. Sharer

**Also Present**

Rep. Don L. Tripp (8/13)

(Attendance dates are noted for those members not present the entire meeting.)

**Staff**

Chase Van Gorder  
Jennie Lusk  
Larry Matlock

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Monday, August 13 — Alamo Chapter, Navajo Nation**

Chapter President Buddy Mexicano gave an introduction, after which committee members, staff and the audience introduced themselves.

**Alamo Chapter, Navajo Nation — Status Update**

Chapter President Mexicano addressed the committee concerning several items of interest to the Alamo Chapter. First, the chapter would like to see the remaining 16 miles of Navajo Route 55 completed to the north to connect with State Route 6 and Interstate 40. At the present, chapter residents must travel a much longer route through Magdalena and Socorro to get to Albuquerque. The existing senior center is due to be demolished due to its physical condition and \$300,000 in capital appropriations for a new senior center have reverted. A delegation from the chapter will be going to Window Rock in an effort to get the funding restored. Approximately \$1.5 million is needed for a new senior center. The chapter needs a store and a groundbreaking is scheduled within the next six months. Finally, the chapter needs \$600,000 to improve its existing lagoon system.

Following extensive discussion among committee members, chapter representatives and members of the audience regarding the history of Navajo Route 55 and its present condition, Senator Ulibarri moved that the committee write a letter to Congressman Steve Pearce, with copies to the Bureau of Indian Affairs (BIA) and Socorro and Valencia county commissioners, expressing the committee's support for the repair and extension of Navajo Route 55 to State Route 6 and Interstate 40. The motion was seconded by Representative Lundstrom and passed without opposition. Frank Chee Willetto of Pueblo Pintado addressed the committee regarding problems with a bridge on Navajo Route 46 that washed out 10 to 12 years ago. It was supposed to have been replaced within four years but it still has not been fixed. Although all signatures for the right of way have been obtained, there is no funding for the bridge.

Socorro County Commissioner Stanley Herrera listed other needs of the community, including the senior center, funds for emergency coordination relating to homeland security, an indoor rodeo ring and convention center to keep kids off the street and away from drugs, a fire station, a community library, police protection, a dump truck and other road maintenance equipment, economic development and scholarship assistance for students.

**Tribal Roads Workshop**

Mr. Van Gorder advised the committee that the workshop had been scheduled as a departure from the normal format of the committee to permit committee members and representatives from federal, state and tribal transportation agencies to discuss the problems of constructing and maintaining roads in rural tribal areas and to brainstorm about ways in which the

state might assist in resolving such problems other than providing funds for road projects.

The New Mexico Department of Transportation (DOT) was represented by Max Valerio, chief engineer, Germaine Chappelle, general counsel, Larry Maynard, District 6 engineer, Alvin Dominguez, District 1 engineer, and Ron Shutiva, tribal liaison. Mr. Valerio noted that the department's biggest problem is funding. Approximately 85% of the department's funds come from the federal government and the DOT has been advised that federal funding will actually decrease in the coming year. The state's 15% share is not adequate to take care of all of the state's transportation needs, so the department is being forced to reprioritize what needs to be done. The department must also deal with other governmental entities at the federal, regional and local levels, each of which have its own system of funding road projects. Mr. Dominguez addressed the status of State Route 169 running from Magdalena to Alamo. It is a typical rural secondary road that is in need of some repair. In a period of reduced funding, the challenge is how to stretch maintenance dollars and work with other entities. Mr. Valerio noted difficulties encountered in getting environmental clearances for fences. Ms. Chappelle noted that in regards to projects involving tribal roads, the issue of tribal sovereignty is a challenge and must be dealt with on a government-to-government basis. There is a need to be able to streamline that process. Mr. Maynard noted that the cost of maintenance for rural roads is higher than for urban roads due to the cost on mobilizing workers and equipment. One estimate is that new rural roads cost \$1 million per mile. In District 6, Interstate 40 takes up the majority of funds with all other projects being prioritized after the interstate. Last year, the district spent about 11% on tribal secondary roads that constitute about 8% of the roads in the district. Mr. Maynard explained what entities would have responsibility for completing the construction of Navajo Route 55. Mr. Shutiva noted that the department has developed joint power agreements and memoranda of understanding with tribal entities for road projects. Chapters of the Navajo Nation need to work closely with the central government in order to obtain funding for road projects. Representative Lundstrom noted that tribal governments participate fully in transportation planning.

The BIA was represented by Tim Deasis, deputy regional director for the Navajo Regional Office, and Irvin Bekis, Transportation Division manager, Navajo Regional Office. Mr. Deasis noted that the role of the BIA is complicated by the fact that tribal entities have differing needs and priorities. The Navajo Regional Office receives only \$6 million annually for the maintenance and improvement of roads on the entire Navajo reservation. Mr. Bekis commented on the status of efforts to construct Navajo Route 55 through to Interstate 40. One problem stems from trying to get the required right of way from the State Land Office. Fourteen miles of the proposed road are within Indian trust land. The BIA has money earmarked for construction of the road. Mr. Bekis discussed the BIA's role in the maintenance of roads within the Navajo Nation and referred to a handout distributed to the committee. He noted that the Navajo Nation determines how BIA funds are used within the reservation.

The Navajo Nation was represented by Sampson Begay, chair of the Navajo Nation Council's Transportation and Community Development Committee (TCDC), Tony Padilla, chair of the Eastern Agency Road Committee, and Tom Platero, director of the Navajo Nation

Department of Transportation. Mr. Begay noted that the TCDC has oversight for all transportation activities for the Navajo Nation. There are approximately 10,000 miles of road in the Navajo Nation, of which 2,500 miles are paved. About two-thirds are BIA roads with one-third being state and county roads. The Navajo Nation receives its road construction funds from the federal Indian Reservation Roads (IRR) Program. The TCDC has been working to increase the inventory of tribal roads in order to increase federal funding that has decreased during recent years. Mr. Begay stated that the TCDC hopes and expects that U.S. Highway 491 will be improved as originally planned, and he intends to leave negotiations on that issue to those who are looking out for the best interests of the Navajo Nation. Mr. Padilla explained the role of the Eastern Agency Road Committee in prioritizing road projects for the 31 chapters within its area and working with federal, state and tribal entities to get projects underway. One of the main problems in implementing road projects is obtaining the required right of way. Mr. Platero explained the work that the department has done to increase the inventory of roads within the Navajo Nation in order to increase federal IRR funding. He explained the improvements that have been made recently at the Crystal Chapter and indicated the department's intention to hire a project manager to work on projects in New Mexico. The department has hired a consultant to establish road standards to be put into the Navajo Nation Code and there is consideration of making the department a division of the Navajo Nation. President Shirley recently signed an agreement to give the department access to every road on the reservation. This will permit better coordination with the BIA. Mr. Platero explained efforts to increase training and gave an update on plans to build a new departmental complex. He thanked the committee for assistance through the GRIP II bill.

Ms. Chappelle then gave the committee an update on the status of negotiations regarding the planned improvements to U.S. Highway 491. The two remaining points that have not been agreed upon concern the Navajo Nation's contribution to the project and taxation.

Representative Lundstrom moved that the committee write a letter to the commissioner of public lands seeking clarification on the right-of-way issues for the improvement of Navajo Route 55. Senator Lovejoy seconded the motion and it passed without opposition.

Following the workshop on tribal roads, Senator Pinto recessed the meeting at 4:13 p.m.

#### **Tuesday, August 14 — Haak'u Museum, Pueblo of Acoma**

The third meeting of the IAC for the 2007 interim was called back into session by Representative Madalena, co-chair, on Tuesday, August 14, 2007, at 10:37 a.m. at the Haak'u Museum in the Pueblo of Acoma. First Lieutenant Governor Gregory Histia gave an introduction, after which committee members, staff and the audience introduced themselves.

### **Pueblo of Acoma — Status Update**

Governor Jason Johnson welcomed the committee to the Pueblo of Acoma. He noted that diabetes is the number one issue for Native Americans. The pueblo currently has only a four-bed dialysis facility; a larger facility is needed. Methamphetamine and alcohol are problems but they will fight the addiction problems of Native Americans. First Lieutenant Governor Histia invited committee members to return to Acoma for the pueblo's feast day on September 2. He then requested continued support from the state through the Tribal Infrastructure Fund, capital outlay appropriations and gaming compact negotiations. The pueblo is involved in a number of major projects through 2010. One project is the development of a new intersection at Exit 102 on Interstate 40. GRIP II provided partial funding for a new railroad grade separation bridge. Through the Tribal Infrastructure Fund, the pueblo has received \$750,000 for a wastewater treatment project for commercial development at Exit 102; all funds will be expended by September 30, 2007. The pueblo will apply for further funding for wastewater treatment at the Village of Acomita and the Village of McCarty needs a sewer system. Water is a high priority for the pueblo. In the area of economic development, the pueblo is the largest employer in Cibola County with a total employment of 650, of which 200 are tribal employees. Acoma Steel Manufacturing has a potential for 180 new, high-paying jobs. There is also a potential for 60 new jobs in connection with new commercial development at Exit 85 in Grants. Design work has been completed for an \$18 million community center. A new dialysis center with 24 beds will be under construction by November. The Acoma Boys' and Girls' Club is currently undergoing renovation with a \$250,000 capital outlay appropriation, although \$1 million will be needed to complete the project. The pueblo recently built with its own funds a new public safety facility. Questions from the committee addressed capital outlay priorities, negotiations for a new gaming compact with the state and reconstruction of Exit 102 on Interstate 40.

Representative Begaye moved that the committee write a letter to Henry Gonzales at the DOT requesting information regarding the involvement of the railroad companies in the planning and construction of a new bridge. The motion was seconded by Representative Rodella and passed without opposition.

### **Native American Health Care Delivery**

Ken Lucero, chair of the All Indian Pueblo Council (AIPC), and Ohkay Owingeh Governor Joe Garcia, AIPC vice chair, addressed the committee and invited Dr. Tassie Parker, vice president of the board of First Nations Health Source, an Albuquerque clinic serving a predominantly Native American caseload, to join them.

Governor Garcia noted that AIPC has existed since 1598 and came into being to protect and preserve mutual interests of the pueblos. The governor noted that pueblo people comprise 3.5% of the New Mexico population and have a land base of 3,485 square miles. National health expenditures average approximately \$6,100, and federal prisoners average approximately \$3,242 in health care costs. However, the federal government contributes on average a total of \$2,130 for pueblo citizens. The Albuquerque Indian Health Service average expense for Native American clients was \$1,473.

Mr. Lucero said that pueblo governors question the depth and strength of the state's commitment to health care for native people. While the 2003 tribal consultation agreement required agencies to consult with tribes, such consultation has not happened in the state's consideration of a new universal health care plan. The AIPC endorses the concept of the Indian Health Care Improvement Act, which was introduced as HB 784 during the 2007 session. Among the provisions of the act are creation of a council of state, tribal and off-reservation Native Americans; establishment of the Native American Division of Health; changing the currently short-term, at-will tribal liaison positions at the Department of Health to permanent staffing; and establishing a Tribal Health Care Improvement Fund. Health Secretary Dr. Alfredo Vigil supports the legislation.

Dr. Parker, a Seneca tribal member who went to the University of New Mexico at age 41, got her nursing degree in Gallup and then received her doctorate in medical sociology in 2001, said that First Nations serves 3,000 American Indian clients and many other minority communities. The clinic incorporates traditional as well as more western healing methods in its services and provides one day per week of mental health and substance abuse services. Dr. Parker has just completed a research project at the Youth Diagnostic and Development Center (YDDC) on the needs of Native American children. The doctor stressed that Native American children need prevention programs, and noted that 60% of the homeless persons in Albuquerque are Native American.

First Nations does not have a contract with ValuOptions, the state behavioral health provider, for behavioral health services. Representative Lundstrom moved and Senator Lovejoy seconded a motion to request information and a presentation from ValuOptions on services in Native American communities. The motion passed unanimously.

Discussion returned to the Indian Health Care Improvement Act and strategies for sponsorship and moving the bill through the next session. Senator Lovejoy moved and Representative Lundstrom seconded a motion requesting clarification of substantive issues prior to presenting the bill to the November IAC meeting. The motion passed unanimously. Among the issues to be worked out prior to the next session are the act's scheme for financing, fairness and equity in the makeup of urban representation on the health council, and the ability of the secretary of health to vote within the council. Committee members and presenters agreed that an unfunded mandate was of no practical use, so the bill's sponsors will be insistent that adequate funds be appropriated as the bill moves through the chambers.

Representative Vaughn quizzed Governor Garcia on services for veterans, the AIPC's position on the Indian Health Care Improvement Act and the AIPC's position on the state's universal coverage discussions. Mr. Lucero said the AIPC had no consultation on the universal coverage proposals and therefore made no recommendation, although AIPC advocates some type of reform.



## **Transportation and Highway Issues**

Representative Begaye referred to the discussions the committee had at the Alamo Chapter regarding transportation issues and moved that the committee write a letter to Navajo Nation President Joe Shirley, Jr., regarding the U.S. Highway 491 project. The letter should refer to anticipated cuts in federal funding for the DOT that will jeopardize that project if there are further delays in beginning construction. The letter should advise President Shirley that if there is not a final agreement by November 20, 2007 between the state and the Navajo Nation regarding all aspects of that project, the committee will support legislation during the 2008 legislative session to reauthorize funds slated for the U.S. Highway 491 project to other road projects affecting the Navajo Nation. It is the fear of the committee that if those funds are not committed to projects that can commence construction immediately, there is a chance that the funds will be lost completely due to the underfunding of GRIP I projects. The motion was seconded by Senator Lovejoy and passed without objection.

Senator Lovejoy moved that the committee write a letter to President Shirley to encourage the Navajo Nation to do what it can to expedite the completion of improvements to Navajo Route 55 from the Alamo Chapter to Interstate 40. Representative Lundstrom seconded the motion and it passed without objection.

## **Resumption of Uranium Mining**

Milton Head, a resident of Grants representing the Bluewater Valley Downstream Alliance, addressed the committee regarding concerns about contamination resulting from past uranium mining and milling activities. He gave the background of uranium mining and milling activities that resulted in the contamination of ground water aquifers. The problem was first identified in 1961 and, following the filing of a lawsuit by citizens affected by the polluted water, efforts were started to clean up the contamination. At this point, four aquifers have been contaminated, including three aquifers in the Chinle shale; residents in the area of the former Homestake mill have lost the use of their water wells. There is concern that the San Andres Aquifer, the source of water for Milan and Grants, will also become contaminated. The alliance believes that contamination from past uranium mining and milling activities must be completely remediated before consideration is given to new mining and milling activities. Furthermore, new regulations should be put into place to prevent a reoccurrence of contamination if mining and milling activities are resumed. Every potentially contaminated site should be evaluated individually and blanket environmental impact statements by the Nuclear Regulatory Commission for in situ mining proposals should not be permitted.

Laura Watchempino, water quality specialist with the Haaku Water Office, Pueblo of Acoma, briefed the committee on the concerns of the pueblo regarding the proposed resumption of uranium mining and milling activities. Mt. Taylor to the north is a sacred site and a central feature to the Acoma culture. Proposals to drill 25 exploratory drill holes to a depth of 2,000 feet have the potential to puncture and contaminate aquifers and should not be viewed as having minimal impact. Furthermore, the drilling is a desecration of sacred ground. Waterways will permit contaminants to flow downstream into Acoma; Bluewater Lake is already polluted. No

mining technology can adequately protect the aquifers that are the sources of drinking water. The entire area around Mt. Taylor should be declared as unsuitable for uranium mining; Section 106 of the National Historic Preservation Act requires that the pueblo be consulted regarding further mining proposals in the Mt. Taylor area. Acoma has a history of people suffering from the effects of uranium; many have died from cancer. The University of New Mexico is undertaking a health study, the preliminary results of which show a link between uranium mining and kidney disease. The revival of farming in Acoma is dependent upon good water. Jimmie Torvio with the Acoma Water Rights Commission agreed that the proposals for new mines in the area of Mt. Taylor would be an invasion of sacred lands. He noted that there are already restrictions on what crops irrigated water can be used for: alfalfa and oats, not crops that will be directly consumed by humans. Augustine Seymour, also with the Acoma Water Rights Commission, noted he was a former uranium worker and has suffered from cancer. He expressed concern about the ongoing pollution resulting from lands contaminated by past uranium mining and milling activities. Governor Johnson said that uranium mining has affected and will affect ground water, surface water and cultural issues. As a former miner, he indicated that people must learn from past mistakes related to uranium mining and milling. Water is the source of life and must be protected.

Representative Lundstrom moved that the committee request that the New Mexico Department of Environment study the potential of establishing a "Superfund" district in an area that would include Ambrosia Lake and advise the committee of the consequences of establishing such a district. The motion was seconded by Senator Ulibarri and passed without objection. In a response to a question from Representative Salazar, Derrith Watchman-Moore from the Department of Environment stated that the department does not take a position regarding the drilling of exploratory holes for uranium. The department works with the Energy, Minerals and Natural Resources Department when a mine is opened to ensure there is a closure plan that adequately addresses ground water protection. Concern was expressed regarding the process used by the Energy, Minerals and Natural Resources Department to permit exploratory drilling (no public hearings are required) and the degree of financial accountability required when new mines are opened. Senator Lovejoy moved that the committee staff request that the Department of Environment and the Energy, Minerals and Natural Resources Department review the solutions and prevention measures suggested by the Bluewater Valley Downstream Alliance and advise the committee regarding the merits of those suggestions and which of those suggestions can be implemented administratively and which would have to be implemented through legislation. The motion was seconded by Representative Madalena and passed without objection.

### **Native American Culture and Tourism Development**

Travis Suazo, tourism development director/Indian tourism program manager, Tourism Department, presented a PowerPoint presentation regarding the state's Indian Tourism Program. In FY06, visitor spending in New Mexico exceeded \$5 billion, creating approximately 80,000 jobs and a payroll of almost \$1 billion. Tourism resulted in \$323 million in state tax revenue, \$34 million in lodger's tax revenues and \$78 million in local tax revenues. The department's Indian Tourism Program assists the state's Native American tribes, nations and pueblos in developing

and promoting Indian tourism to the degree and in the manner desired by individual tribal governments and organizations. The program also provides assistance to tribes and Indian organizations in tourism product development, promotion and outreach, and in ensuring equitable Native American representation in the tourism industry. Mr. Suazo discussed the importance of Native American culture to the state's tourism industry and the Native New Mexico guide that will be released in print and on-line later this year. Randy Howarth, operations manager for the Sky City Cultural Center and the Haak'u Museum, briefed the committee on the background of tourism at the Pueblo of Acoma and the development of the Sky City Cultural Center and the Haak'u Museum. He expressed appreciation to the committee for the \$200,000 capital outlay appropriation that provided for the vendor booths outside the museum.

Following the presentation on Native American culture and tourism development, Representative Madalena recessed the meeting at 3:50 p.m. so that committee members and staff could participate in a tour of Sky City.

### **Wednesday, August 15 — Tohajiilee Chapter, Navajo Nation**

The third meeting of the IAC for the 2007 interim was called back into session by Senator Pinto, co-chair, on Wednesday, August 15, 2007, at 9:44 a.m. at the chapter house of the Tohajiilee Chapter. after which committee members, staff and the audience introduced themselves.

### **Tohajiilee Chapter, Navajo Nation — Status Update**

Chapter President Tony Secatero gave an introduction and Lee Annie Willie, chapter secretary-treasurer, gave an invocation. Juana Platero, who is the reigning Miss Tohajiilee, introduced herself and spoke about her experiences as the local high school princess. Chapter Vice President Mark Begay gave the committee an extensive review of the history of the chapter and the Cañoncito Band of the Navajo Nation. The name of the chapter was changed in 2001 from Cañoncito to Tohajiilee, which means "lifting up water by rope in container". The chapter strives to provide for its families' basic needs: decent shelter, running water and electricity. The chapter is currently involved with the City of Albuquerque in a massive project to bring domestic water to Tohajiilee. Other capital outlay needs include a new tribal administrative service center, improvements to Navajo Routes 73, 56 and 57, a new child care facility, paving the clinic parking lot, a new youth multipurpose building, bathroom additions, heavy equipment, wastewater drain fields, a police substation and detention center. Vice President Begay also commented upon the impact of education and the No Child Left Behind Act Program (NCLB), the Headstart Program and housing. Leo Lopez commented upon the unique status of the Tohajiilee Chapter within the Navajo Nation. He also noted that all 21 of the graduating seniors in the chapter passed the state qualifying exam. Commander Larry Alonzo of the U.S. Public Health Service briefed the committee on the status of the new Cañoncito Health Clinic, which has been fully completed and is operational. Keri Jojola, a counselor at the community school, commented upon the impact and shortcomings of the NCLB Program. Harrison Platero with the Tohajiilee Health Board commented upon the status of school-based health care. Sarah Bitsui discussed efforts the

chapter is making in dealing with addiction and mental health issues. Norbert Sanchez briefed the committee on what the chapter is doing to treat the 250 chapter members with diabetes and stressed the critical state of funding as that program is in the final year of its grant.

In the course of questions and discussion by committee members, Senator Lovejoy moved that the secretary of Indian affairs report to the committee at its next meeting regarding the status of direct funding to the Ramah, Alamo and Tohajiilee chapters of the Navajo Nation. The motion was seconded by Senator Pinto and passed without objection. Representative Madalena moved that the committee send a letter to the state's congressional delegation urging support for the reauthorization of and funding for programs addressing diabetes. The motion was seconded by Representative Vaughn and passed without objection.

### **Native American Voting Rights**

Secretary of State Mary Herrera introduced herself and members of her staff to the committee. Donna Begaye is a member of the Navajo Nation and was recently hired to work out of Crownpoint to assist the McKinley and Cibola county clerks to increase voter registration, training and election turnout. Martin Aguilar has been with the Office of the Secretary of State for several years and works with voting coordinators throughout the state to get ready for the 2008 primary and general elections. Daniel Ivey-Soto is the deputy secretary of state in charge of election, ethics and legal issues. Mr. Ivey-Soto discussed what the office is doing to implement the provisions of House Bill 1140 from the 2007 legislative session providing for alternative early voting locations on tribal lands, including mobile voting sites; proposed rules on this subject are presently being prepared. In locations with limited resources, provisions may be made for absentee ballot repositories. Mr. Aguilar described the efforts he has been making to prepare for the 2008 elections. One focus is on increasing access for Native American voters through precinct development. Eileen Martinez, Cibola County Clerk, explained what her office has been doing to avoid the problems experienced in the 2004 elections. She has had a problem in getting suggested names for Native American voting coordinators for tribal entities within Cibola County, and explained that budgetary constraints adversely affect her office's efforts to assist Native American voters. Secretary Herrera emphasized that her office is committed to increasing Native American voter registration and turnout but that there is a need for \$250,000 to enable compliance with the federal Minority Language Requirement Act. Upon questions from the committee, there was extensive discussion regarding additional financial appropriations to the Office of the Secretary of State, early voting sites and the proposed rules expected to be promulgated by October 1.

### **Adjournment**

There being no further business before the committee, the third meeting of the IAC for the 2007 interim adjourned at 1:55 p.m.

**Revised: September 17, 2007**

**TENTATIVE AGENDA  
for the  
FOURTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

## September 19-21, 2007

**Gadii Ahi (Cudeii) Chapter, New Mexico**  
**T'iistoh Sikaad (Burnham) Chapter, New Mexico**  
**San Juan Chapter, New Mexico**

**Wednesday, September 19 — Gadii ahi (Cudeii) Chapter, Navajo Nation**

10:00 a.m.      **Call to Order**

10:05 a.m. **Gadii ahi (Cudeii) Chapter, Navajo Nation — Status Update**

- Harry Descheenie, President
- Evelyn H. Jim, Vice President
- David L. Tom, Council Delegate

**11:00 a.m. Behavioral Health Collaboratives**

- Regina Begay-Roanhorse, Co-Chair, Local Collaborative 15
- Gus Abeyta, Chair, Local Collaborative 14
- Gwen Packard, Co-Chair, Local Collaborative 14

12:00 noon      **Lunch**

1:00 p.m. **Navajo Nation Veterans' Income Tax Refunds**

—Raymond Jim, President, Navajo Veterans Organization, Shiprock Agency

2:00 p.m. **State Medical Investigator Navajo Nation Services**

- Etta Arviso, Huerfano Chapter, Navajo Nation
- Tim Stepetic, Associate Director, Office of the Medical Investigator (OMI)
- Scott Wilson, Associate Director, OMI

3:00 p.m. Tribal Extension Services — Status Update

—Paul H. Gutierrez, Vice Provost for Outreach Services and Associate Dean,  
Cooperative Extension Service, New Mexico State University

4:00 p.m.      **Recess**

**Thursday, September 20 — T'iistoh Sikaad (Burnham) Chapter**

9:00 a.m.      **Call to Order**

9:05 a.m.      **T'iistoh Sikaad (Burnham) Chapter, Navajo Nation — Status Update**  
—Albert Davis, President  
—Art Yazzie, Vice President  
—George Arthur, Council Delegate

10:30 a.m.      **State/Tribal Park Consultation and Partnership Program**  
—Dave Simon, Director, New Mexico State Parks  
—Martin Begaye, Assistant Director, Navajo Nation Parks and Recreation  
Department  
—Herb Yahze, Member, State Park Advisory Board

12:00 noon      **Lunch**

1:00 p.m.      **Desert Rock Power Plant — Status Update**  
—Nathan K. Plagens, Vice President, Desert Rock Energy Company, LLC  
—Steven C. Begay, General Manager, Diné Power Authority  
—Harrilene Yazzie, Regional NEPA Coordinator, Navajo Regional  
Office, Bureau of Indian Affairs  
—Elouise Brown, Dooda Desert Rock Committee

2:30 p.m.      **Tour of Proposed Desert Rock Power Plant Site**

5:00 p.m.      **Recess**

**Friday, September 21 — San Juan Chapter, Navajo Nation**

9:00 a.m.      **Call to Order**

9:05 a.m.      **San Juan Chapter, Navajo Nation — Status Update**  
—Wilbert C. Begay, President  
—Robert C. Begay, Vice President  
—George Arthur, Council Delegate

10:00 a.m.      **Certification of Navajo Nation Chapters — Status Update**  
—Ryan Claw, Auditor General, Navajo Nation  
—Sampson Begay, Chair, Transportation and Community Development  
Committee, Navajo Nation Council  
—Herbert Clah, Director, Shiprock Local Government Support Center, Navajo  
Nation

11:00 a.m.    **Navajo Nation Capital Outlay Appropriations — Status Update**  
                  —Benny Shendo, Jr., Secretary of Indian Affairs  
                  —Rebecca Martinez, Capital Outlay Manager, Indian Affairs Department  
                  —Arbin Mitchell, Director, Division of Community Development, Navajo Nation

12:00 noon    **Lunch**

1:00 p.m.     **Adjourn**

**MINUTES  
of the  
FOURTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**September 19 - 21, 2007  
Gadii Ahi (Cudeii) Chapter, New Mexico  
T'iistoh (Burnham) Chapter, New Mexico  
San Juan Chapter, New Mexico**

The fourth meeting of the Indian Affairs Committee for the 2007 interim was called to order by Representative Ray Begaye at 10:24 a.m. in the chapter house of the Gadii Ahi (Cudeii) Chapter of the Navajo Nation.

**Present**

Rep. James Roger Madalena, Co-Chair  
Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Lynda M. Lovejoy (9/20 & 9/21)  
Rep. Patricia A. Lundstrom  
Rep. John Pena  
Sen. Lidio G. Rainaldi (9/20)  
Rep. Gloria C. Vaughn

**Absent**

Sen. John Pinto, Co-Chair  
Sen. Dianna J. Duran  
Rep. Justine Fox-Young  
Rep. Manuel G. Herrera  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. W. C. "Dub" Williams

**Advisory Members**

Rep. Nick L. Salazar

Sen. Ben D. Altamirano  
Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella  
Sen. William E. Sharer  
Sen. David Ulibarri

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Chase Van Gorder  
Jennie Lusk  
Larry Matlock

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.



## **Wednesday, September 19 — Gadii Ahi (Cudeii) Chapter, Navajo Nation**

### **Gadii Ahi (Cudeii) Chapter, Navajo Nation — Status Update**

Chapter President Harry Descheenie welcomed the committee to the chapter. The chapter was formed in 1978 when it broke away from another chapter located 20 miles to the west. There are two communities, one of which is primarily farming, and the other is involved with oil, gas and helium production. The chapter has moved from a costly, work-intensive, open-canal irrigation system to a more modern system. The first two phases have been completed, and the chapter will be seeking \$200,000 in capital outlay appropriations to complete Phase 3. There is only a single road providing access to the chapter, which can be a problem. Although the chapter receives some tax revenue from Shiprock, the chapter is small and will receive more financial help once the Shiprock Chapter becomes certified. The chapter has already undertaken improvements to its irrigation system and is working toward partnering with First World to establish a remote satellite system to provide wireless telephone and internet service to chapter residents. The chapter is pursuing the construction of a correctional facility to be located on a 640-acre parcel already identified through the Bureau of Indian Affairs (BIA). The chapter is currently completing the environmental assessment necessary for a land withdrawal. President Descheenie described his own involvement in the corrections industry and the benefits a new facility would bring to the chapter, to Shiprock and to the Navajo Nation. It is anticipated that there will be a corrections academy located in Shiprock in conjunction with Diné College for training purposes.

Following a discussion of land reclamation and waterways, Representative Lundstrom moved, and Representative Vaughn seconded, that the committee write a letter to responsible parties encouraging them to support financially efforts to eradicate noxious, invasive, nonnative plant species. Committee members in attendance, voting as a subcommittee, unanimously supported the motion. President Descheenie also indicated that the chapter needs a new multipurpose building for the use of the chapter's seniors and youth because the chapter house is not located in the center of the community. There ensued extensive discussion among chapter representatives and committee members regarding problems in obtaining timely permission and funding from the Navajo Nation for capital projects supported by the state.

### **Tohatchi Veterans Organization**

Representatives of the Tohatchi Veterans Organization, including Commander Charles Arviso, past Commander Tom Tony and others, presented a proposal to build a new community center in Tohatchi. The request is for \$1.6 million for a community center to meet the needs of the 600+ veterans in District 14 and the community needs of the residents of Tohatchi. The proposal has been supported by resolution of the Tohatchi Chapter of the Navajo Nation and the District 14 Council of the Navajo Nation. The Tohatchi Chapter has also approved the withdrawal of land as a site for the proposed community center. Questions and comments from the committee focused on issues related to getting capital outlay appropriations to chapters of the

Navajo Nation approved by the Navajo Nation and implemented in a timely fashion prior to reversion of the funds.

### **Behavioral Health Collaboratives**

Regina Roanhorse, a volunteer and consumer advocate, and Dr. Caroline Morris, a psychologist with the Navajo Nation Department of Health Behavioral Health Services, presented to the committee behavioral health issues in the Native American community. Ms. Roanhorse explained the organization of the behavioral health collaboratives, their funding sources and relationship to the Navajo Nation. She, along with Mike Salabiye (also with the Navajo Nation Department of Health Behavioral Health Services), presented appropriation requests for the 2008 legislative session, including a \$2 million capital outlay request that would complete funding for the Navajo Nation regional adult residential treatment center to be located in Shiprock. Questions and discussion from committee members included a discussion of past funding efforts, coordination with the state Department of Health budget requests and the availability of additional funds through the Tribal Infrastructure Project Fund. Representative Lundstrom moved, and Representative Madalena seconded, that the committee write a letter to Robert Apodaca requesting that the funds appropriated in Senate Bill 827 during the 2007 legislative session for the regional adult residential treatment center to be located in Shiprock not be commingled with other funds and that he move as quickly as possible to get out a request for proposals (RFP) for that project. Committee members in attendance, voting as a subcommittee, unanimously supported the motion.

### **Navajo Nation Veterans' Income Tax Refunds**

Raymond Jim, president of the Shiprock Agency Navajo Veterans' Organization, requested that the committee support legislation that would extend the state statute of limitations relating to the filing of requests for state income tax refunds. This would permit Native American veterans to seek the refund of money that was improperly withheld from their military pay for the payment of state income taxes. Representative Lundstrom moved, and Representative Madalena seconded, that the committee support the reintroduction of Senate Bill 1230 from the 2007 legislative session with a revision that it apply to all veterans. Committee members in attendance, voting as a subcommittee, unanimously supported the motion. Mr. Jim also presented an appropriation request in the amount of \$50,000 for the planning and design of a Native American veterans' memorial in the Shiprock Agency.

### **State Medical Investigator — Navajo Nation Services**

Etta Arviso of the Huerfano Chapter of the Navajo Nation asked the committee to consider resolutions adopted by the Huerfano and Nageezi chapters of the Navajo Nation requesting that the Navajo Nation Council appropriate funds to pay the state Office of the Medical Investigator (OMI) for past services rendered so that autopsy and other related death investigation services can once again be provided by the state to the Navajo Nation. Tim Stepetic and Scott Wilson, associate directors of the OMI, addressed the committee regarding the background of services rendered by the OMI to tribal entities, including the Navajo Nation. Mr. Stepetic stated that the OMI charges for autopsies and death investigations on tribal lands because

the OMI has no jurisdiction over those investigations and participates by invitation only. Both the Federal Bureau of Investigation (FBI) and the BIA pays the OMI for investigations related to homicides. While all tribal entities pay for such services, it is a bigger problem for the Navajo Nation due to the number of service requests each year. Mr. Stepetic and Mr. Wilson reviewed the history of services provided by the OMI to the Navajo Nation and payments by the Navajo Nation, as well as the history of proposed legislation during the 2007 legislative session. The current debt to the OMI owed by the Navajo Nation is \$254,207. A moratorium on services provided by the OMI to the Navajo Nation was imposed in April 2006 due to the unpaid debt. Stephanie Kiger, general counsel for the Indian Affairs Department, also commented on the 2007 legislation. Representative Lundstrom moved, and Representative Madalena seconded, that the committee write a letter to the appropriate officials of the Navajo Nation, urging them to resolve the outstanding debt to the OMI so that death investigation services can once again be provided to the Navajo Nation by the OMI. Committee members in attendance, voting as a subcommittee, unanimously supported the motion.

### **Tribal Extension Services**

Paul Gutierrez, vice provost for outreach services and associate dean, Cooperative Extension Service, New Mexico State University (NMSU), Alton Henderson, Navajo Nation Department of Agriculture, Anthony Howard, Navajo Technical College extension agent, and Benita Litson, Diné College Land Grant Office, addressed the committee regarding tribal extension services. The mission of the New Mexico tribal extension initiative is to develop and deliver community-based education programs that will revitalize indigenous agriculture, implement culturally appropriate youth leadership projects and strengthen the bonds among individuals, families and communities. The overall goal of the initiative is to serve all 22 tribal entities through the planning of eight tribal extension centers. During the 2007 legislative session, \$247,000 was appropriated for the initiative. With financial, matching and in-kind grants from the state, NMSU and the Navajo Nation, a Northern Navajo Extension Center has been established in Shiprock and an Eastern Navajo Extension Center has been established in Crownpoint. The NMSU Board of Regents has established as a priority for the 2008 legislative session a \$500,000 appropriation to establish two or three additional tribal extension centers.

Following the discussion of tribal extension services, Representative Lundstrom suggested three items for committee action: 1) schedule a presentation by the Department of Transportation (DOT) at the committee's November meeting to discuss the recommendations of the House Memorial 35 Task Force on Transportation Funding and draft legislation setting aside a portion of the revenues from the new gaming compact for tribal transportation projects; 2) schedule a discussion of subprime mortgage lending for the committee's November meeting; and 3) draft a \$500,000 appropriation for the tribal extension initiative to be carried by Representative Begaye.

Representative Begaye recessed the meeting at 4:12 p.m.

**Thursday, September 20 — T'iistoh (Burnham) Chapter, Navajo Nation**

The fourth meeting of the Indian Affairs Committee for the 2007 interim was called back into session by Representative Begaye on Thursday, September 20, 2007, at 9:45 a.m. at the chapter house of the T'iistoh (Burnham) Chapter of the Navajo Nation.

### **T'iistoh (Burnham) Chapter, Navajo Nation — Status Update**

Albert Davis, president, and Art Yazzie, vice president, of the chapter acquainted the committee with the history of T'iistoh Sikaad ("Big Tree Planted"), whose name was changed last year from that given by missionaries in 1923. The 360-square-mile chapter has 440 voters, of which 200 live within the chapter. The chapter is the home of a world champion cowboy, Nelson Tsosie. The chapter discussed the chapter's finances and listed its priorities as including a veterans' memorial and housing project, a bridge across Hunter Wash, a power line extension to the 12 remaining homes in the areas with no electricity, a western waterline extension from Huerfano to T'iistoh Sikaad and a senior citizen building. The chapter currently serves 36 seniors, but expects it could register as many as 160 if and when it has capacity. The chapter expects to be audited by the Navajo Nation in the first quarter of fiscal year 2008 for certification, pursuant to the Navajo Local Governance Act, after a visit in the final quarter of this calendar year. The chapter hopes to be connected to Highway 391 via Navajo Highway 5 by this time next year. Representative Lundstrom expressed support for a joint memorial in the upcoming legislative session requesting the Indian Affairs Department, the State Personnel Office and the state auditor to help the chapters with their certification process, because chapters often are left without expertise in pursuit of Navajo Nation certification. George Arthur, Navajo Nation Council delegate, addressed the committee on the issues of the chapter's natural resources, chapter certification, the proposed Desert Rock power plant and the planned Gallup-Navajo water supply pipeline project.

The discussion turned to the status of proposed improvements to U.S. Highway 491 and the disposition of State of New Mexico funds for the project. Last month, the Indian Affairs Committee voted to redirect state funds for the project if final approval on all aspects of the projects is not reached by the state and the Navajo Nation. At the present time, the Navajo Nation and the state have two remaining pending issues — taxation and the percentage of funds or materials to be contributed to the project by the nation. Representative Lundstrom explained that the New Mexico side of the project has had 38% inflation, and legislators are concerned that funds will be inadequate to complete the project. Mr. Arthur offered to help state legislators through the quagmire of the Navajo Nation bureaucracy, if needed. Representative Begaye moved and Senator Lovejoy seconded, a motion requiring committee leadership to meet with DOT Secretary Rhonda Faught to get perspective on the state's remaining issues on problems with finalizing negotiations between the state and the Navajo Nation. The motion carried unanimously.

## **Minutes**

Upon a motion by Senator Rainaldi, seconded by Senator Lovejoy, the committee approved without objection the minutes from the July and August 2007 meetings of the Indian Affairs Committee.

## **Ratification of Subcommittee Actions on September 19, 2007**

With a quorum of voting members present, the committee voted to ratify actions taken the previous day as a subcommittee regarding a letter concerning nonnative plants, the funding of the proposed regional adult residential treatment center to be located in Shiprock, reintroduction of Senate Bill 1230 from the 2007 legislative session and a letter to the Navajo Nation regarding the debt allegedly owed to the OMI. At the committee's request, Mr. Van Gorder said he would send a list of bills to be drafted to the committee and attempt to get topics on the November agenda, including subprime lending. Representative Begaye said he would reintroduce a bill instructing that tribal project funds that revert be directed to the Tribal Infrastructure Fund.

## **State/Tribal Park Consultation and Partnership Program**

Dave Simon, director of New Mexico state parks, introduced Martin Begaye, assistant director of the Navajo Nation Parks and Recreation Department, and Herb Yahze, Monument Valley park manager and State Park Advisory Board member. The panelists discussed a new policy and a memorandum of understanding between the state and the Navajo Nation. The new policy specifically requires tribal access to tribal sites and has helped Jicarilla Apaches get access to their sacred sites near Clayton, New Mexico. The consultation program was adopted prior to the governor's executive order requiring such consultations from all executive departments. Mr. Begaye described the memorandum of understanding between the Navajo Nation and the state parks as the first in the nation. The document provides a framework for government-to-government financial agreements to support maintenance and upgrades of state parks. Committee members asked about the status of Red Rock State Park and were told that the state will assume management and ownership effective December 1. The park will need capital infrastructure improvements for upgrades required by the Americans with Disabilities Act and other needs. Asked about the reservations policy for state parks, Mr. Simon said that reservations are taken up to six months in advance, but that only three-fourths of state parks are reserved on a first-come, first-served basis. Asked about Navajo Lake State Park, Mr. Simon responded that \$1.5 million has been spent on revamping the sites over the past three years, including repair of water systems and electrical service.

## **Desert Rock Power Plant — Status Update**

Nathan Plagens, vice president of Desert Rock Energy Company, LLC, and Steven Begaye, general manager for the Diné Power Company, updated the committee on the status of the proposed Desert Rock power plant. The plant is planned as a 1,500-megawatt coal-fired electric power plant that will utilize coal from the adjacent BHP coal mine. Construction cost are estimated at \$2.8 billion beginning in 2008, with completion in 2012, and an expected peak construction employment of 2,850. The presenters reviewed the status of the various permits and agreements that would be needed prior to construction. Reviewing the tax benefits of the

proposed plant, the State of New Mexico should receive \$600 million during the first 25 years of construction and operation. San Juan County should receive \$90 million in gross receipts taxes during that same period. Agreements have been reached with local governmental entities for payments in lieu of taxes in the amount of approximately \$167.3 million through the first 27 years of operation. An agreement has also been reached to provide benefits in excess of \$2.5 million to the Nenahnezad Chapter over the first 25 years. The proponents are still deciding whether to approach the state legislature again in 2008 for compensating tax relief. The presenters reviewed the environmental attributes of the plants, comparing anticipated emissions to those of other types of power plants. Plans for the plant include marketing and reusing carbon dioxide and reducing emissions more than any other plant. A final federal air permit is expected to be issued in September 2007, and a final environmental impact statement is to be issued in early 2008.

Elouise Brown from the Doodah Desert Rock Committee told the committee the Desert Rock site is being watched by environmentalists across the world. She complained that Sithe Global was to drill for water to test at the Desert Rock site for only 45 days, but instead has been there for 200 days. She questioned when the agreements for the water permit would be released because the information has not been made public. She asked the committee to require Desert Rock to find out how many of the required permits have been received, how many comments have been received during the public hearings and whether the company is Navajo-owned. She said 66% of all emitted sulfur dioxide nationwide originates with coal-fired plants and that 130 million tons of pollutants are already created by coal plants. She expressed concern over mercury pollutants as well as long-term climate shifts and severe water shortages and noted that figures on income to be produced by the plant should be reduced by the cost of health and environmental effects it is likely to cause. The Doodah group has held hearings in 10 areas, she said, and most attendees have spoken against the plant. Only one speaker — Steven Begaye — appeared in Santa Fe to support the project. The group has asked the Navajo Nation for a referendum on Desert Rock. Other representatives of Doodah Desert Rock Committee raised additional concerns with the proposed power plant. Representative Begaye said that Sithe Global and the Diné Power Authority could respond in writing to the concerns raised by the Doodah Desert Rock Committee.

Senator Lovejoy asked owners whether they intend that a bill granting a tax credit for the site to New Mexico taxpayers be introduced during the coming legislative session and was told that they may do so. She asked that they prepare thoroughly and address concerns that have been raised. Because the plant is a Navajo Nation project, New Mexico legislators may not have the ability to determine its future, though they can decide whether or not to support the plant through a tax break.

Following the panel discussion on the status of the proposed Desert Rock power plant, members of the committee were given a tour of the site of the proposed plant. Following the tour, Representative Begaye recessed the meeting at 4:30 p.m.

**Friday, September 21 — San Juan Chapter, Navajo Nation**

The fourth meeting of the Indian Affairs Committee for the 2007 interim was called back into session by Senator Lovejoy on Friday, September 21, 2007, at 9:30 a.m. at the chapter house of the San Juan Chapter.

### **San Juan Chapter, Navajo Nation — Status Update**

President Wilbur C. Begay presented an extensive history of the San Juan Chapter, a copy of which is in the meeting archive. The chapter was created by the Navajo Nation in 1982. The Treaty of 1868 set land aside in the Four Corners area, which is now part of the Navajo Nation. District 13 was not included in the Treaty of 1868. By executive order, dated January 6, 1880, and April 24, 1886 District 13 was added to the original Navajo reservation. The Navajo name for San Juan Chapter is Tse'Tsi'Naah Nii Tlini', meaning "stone laid across the river" or "stone bridge". In the early days, people traveled across the San Juan River on horseback to purchase goods at the Hogback Trading Post. In 1933, the Fruitland Irrigation Project was started by the BIA, which was formed to bring the needed water so Navajos would begin to farm. This development led to the establishment of a day school by the BIA in 1934. In 1950, the school was converted to a boarding school and was named Nenahnezad Boarding School. The boarding school still exists today, but a majority of the students attend schools in the Central Consolidated School District. On March 7, 2007, the San Juan Chapter fell under the Local Governance Act certified by the Transportation and Community Development Committee of the Navajo Nation Council. The San Juan Chapter has a population of approximately 1,089, and 363 are registered voters with the chapter. The rest of the population is registered with other chapters. On an average annual basis, the growth rate in the community is 0.5%. The main road through the community is a gravel road. There are no paved roads within the chapter, except for Navajo Route 36, which runs east and west and connects Shiprock and Farmington.

President Begay introduced Vice President Robert C. Begay, the first Begay to serve in the New Mexico Legislature. It was noted that "Begay" is a common name derived by missionary mistranslation of the Navajo word for a maternal son. Ongoing capital outlay projects include a new multipurpose facility that is 95% complete, Phase 3 of power line extensions and farm roads. Priorities for new capital outlay projects include \$9,150,000 for a new Hogback Bridge, \$655,000 for emergency response infrastructure, including police and ambulances, \$5,125,000 for improvements to 14.4 miles of dirt roads used for school bus transportation and \$320,000 for a backhoe to maintain the roads. While the chapter is concerned about raising its own revenue and developing a healthier economic base, its isolation inhibits its ability to do so. The chapter needs to complete a joint powers agreement so that it can receive funds directly from the state.

### **Certification of Navajo Nation Chapters — Status Update**

Sampson Begay, chair of the Transportation and Community Development Committee (TCDC) of the Navajo Nation Council; TCDC members Jerry Bodie, Johnny Naize, Willie Begaye and David Rico; Herbert Clah, director of the Shiprock Local Government Support Center (LGSC); and Alfreda Lee of the Navajo Nation Office of the Auditor General (OAG), addressed the committee regarding the benefits of chapter certification and the services to chapters under the Local Government Act of the Navajo Nation. The certification process is

designed to ensure that the chapters fully understand the management practices necessary for operating a healthy chapter. Ms. Lee presented a series of flow charts illustrating the certification process and explained the reason for the certification requirements. Arbin Mitchell, division director of the Division of Community Development for the Navajo Nation, reviewed the status of chapter certification. Four chapters in New Mexico have already been certified and numerous others are well into the process. Six chapters have already undergone field audits by the OAG. He stated that 96 chapters have submitted their certification documents under the Local Government Act for the nation, half of which have submitted all documents and the other half of which need to make minor corrections. Much progress has been made over the past three years, he said. Senator Lovejoy asked about support for chapters that want to become certified, the version of accounting software being installed at chapters, planning for budgets when severance tax funds are short and continuity of chapter leadership. Mr. Clah reviewed services rendered to chapters by the LGSC, noting that the chapter certification process is new territory for the Navajo Nation and that the Local Government Act already needs to be amended. He stressed how far ahead the chapters are in management abilities from where they were five years ago. Mr. Mitchell said that certification comes with the chapter's ability to issue permits, acquire property, make agreements for goods and services with other chapters, make intergovernmental agreements and contracts, appropriate funds, reallocate funds, establish a peacemaking court and generate revenue. Committee members questioned the presenters concerning what certification actually means for chapters and how it might affect implementation of capital outlay appropriations from the New Mexico Legislature.

### **Public Regulation Commissioners**

Ben Ray Lujan, chair of the Public Regulation Commission (PRC), PRC member Carol Sloane, PRC Native American liaison Teresa Aguilar and PRC consumer relation staffer Joan Rios introduced their work and themselves to the committee and to assembled chapter members. Mr. Lujan gave regards to Senator Lovejoy, a former member of the PRC. Mr. Lujan explained a bit about the work of the PRC and said that the PRC can help with denial of insurance claims, as well as with other insurance and telecommunications problems.

### **Navajo Nation Capital Outlay Appropriations — Status Update**

Teresa Gomez, deputy secretary of Indian affairs, and Rebecca Martinez, capital outlays manager for the Indian Affairs Department (IAD), updated the committee on the status of capital outlay appropriations to the Navajo Nation and its chapters. Ms. Martinez explained the efforts the IAD is making to work with the Navajo Nation to implement successfully capital outlay appropriations. These efforts include daily telephone contact with the Navajo Nation Capital Improvement Office (CIO), face-to-face meetings with the CIO at least quarterly, training sessions with chapter officials and project monitoring in the field. The IAD is stressing community planning as a part of its technical assistance efforts. The IAD is working with the Navajo Nation on 17 pilot projects to test and improve the nation's administrative review process. Ms. Martinez also reviewed the history of reversions of capital outlay appropriations for projects involving the Navajo Nation and its chapters. Committee members reviewed problems they have experienced in getting capital outlay appropriations spent or encumbered in a timely fashion. For



the benefit of the Navajo Nation Council delegates in attendance at the meeting, Representative Lundstrom presented a detailed review of the financial problems facing transportation in New Mexico in general and GRIP I projects in particular. She explained the concern of committee members regarding delays in implementing the Highway 491 project and why it may be necessary to allocate those funds to other projects in northwestern New Mexico so that the benefits of the GRIP I program are not entirely lost to the Navajo Nation. Representative Salazar moved that there be a \$500,000 cap on any single capital outlay appropriation. Senator Lovejoy seconded the motion, and it passed without objection.

Mr. Mitchell and Scott House, who is with the CIO, explained what the Navajo Nation has been doing to help streamline the approval process so that state capital outlay appropriations can be expended in a timely manner. Mr. Mitchell presented a detailed explanation of the status of many pending projects. His division will make planning a priority in the coming fiscal year. It is working to help chapters deal with delinquent scopes of work. Mr. House said efforts to streamline the approval process include technical planning support, technical project management training for chapter officials and training on Navajo Nation procurement laws. Sampson Begay indicated that one ongoing problem is with chapters going directly to legislators with capital outlay requests with the knowledge or involvement of the CIO and outside the coordination policy adopted by the Navajo Nation. It was also observed that delinquent scopes of work delay projects and that there is no reason why scopes of work cannot be submitted at the same time as requests for capital outlay appropriations. Mr. House noted that another problem is that single capital outlay appropriations are often not sufficient to complete a project. The Navajo Nation is working to draft a model joint powers agreement that could be used to speed up the approval process. Mr. Naize requested an opportunity for representatives on the Navajo Nation to meet with legislators regarding the coordination of the application process.

### **Adjournment**

There being no further business before the committee, the fourth meeting of the Indian Affairs Committee for the 2007 interim was adjourned at 2:05 p.m.

Revised: October 2, 2007

**TENTATIVE AGENDA  
for the  
FIFTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**October 3-5, 2007  
Pueblo of Cochiti, New Mexico  
Santa Fe, New Mexico  
Pueblo of San Felipe, New Mexico**

**Wednesday, October 3 — Pueblo of Cochiti**

- 10:00 a.m.     **Call to Order**
- 10:05 a.m.     **Pueblo of Cochiti — Status Update**  
                  —Ray Trujillo, Governor  
                  —Vernon Garcia, Lieutenant Governor
- 11:00 a.m.     **Tribal Infrastructure Board — Status Update**  
                  —Benny Shendo, Jr., Secretary of Indian Affairs  
                  —Representative, Tribal Infrastructure Board
- 12:00 noon     **Lunch**
- 1:00 p.m.       **Assistance to Disabled Persons — Status Update**  
                  —Ray Espinoza, Director, Office of Indian Elder Affairs, Aging and Long-Term  
                  Services Department (ALTSD)  
                  —Joseph Ray, Native American Outreach Program Consultant, ALTSD
- 2:30 p.m.       **Native American Workforce Training**  
                  —Betty Sparrow Doris, Secretary of Workforce Solutions
- 4:00 p.m.       **Recess**

**Thursday, October 4 — Room 307, State Capitol**

- 9:00 a.m.       **Call to Order**

- 9:05 a.m.      **Tribal Emergency Management — Update**  
—Lieutenant Curtis Williams, Emergency Manager, Mescalero Apache Fire Department  
—Mel Tafoya, Director of Special Projects and Emergency Management, Pueblo of Santa Clara  
—Richard Martinez, Assistant Director of Special Projects, Pueblo of Santa Clara  
—Andrez Juarez, Emergency Response Coordinator, Pueblo of San Ildefonso
- 9:30 a.m.      **Native American Health Care Improvement Act**  
—Ben Lujan, Speaker of the House  
—Regis Pecos, Chief of Staff, Office of the Speaker of the House
- 10:30 a.m.      **Collaborative Efforts With Tribes Regarding Child Welfare Issues**  
—Dorian Dodson, Secretary of Children, Youth and Families
- 12:00 noon      **Lunch**
- 1:00 p.m.      **The Changing Energy Era in New Mexico**  
—Cathy Newby, Tribal Relations Administrator, Public Service Company of New Mexico (PNM)  
—Art Hull, Governmental Affairs, PNM
- 2:30 p.m.      **Domestic Violence — Status Update**  
—Sharon Pino, Domestic Violence Czar  
—Teresa Gomez, Deputy Secretary of Indian Affairs
- 4:00 p.m.      **Recess**

**Friday, October 5 — Pueblo of San Felipe**

- 9:00 a.m.      **Call to Order**
- 9:05 a.m.      **Pueblo of San Felipe — Status Update**  
—Michael T. Sandoval, Governor  
—Joseph E. Sandoval, Lieutenant Governor
- 10:30 a.m.      **Health Care Reform**  
—Ronald Reid, M.D., Tribal Liaison, Department of Health  
—Roxanne Spruce-Bly, Chief Executive Officer, New Mexico Native American Health Council
- 12:00 noon      **Lunch**
- 1:00 p.m.      **Adjourn**

**MINUTES  
of the  
FIFTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**October 3-5, 2007  
Pueblo of Cochiti, New Mexico  
Santa Fe, New Mexico  
Pueblo of San Felipe, New Mexico**

The fifth meeting of the Indian Affairs Committee (IAC) for the 2007 interim was called to order by Representative James Roger Madalena, co-chair, at 10:29 a.m. in the meeting room of the community center at the Pueblo of Cochiti.

**Present**

Rep. James Roger Madalena, Co-Chair  
Sen. John Pinto, Co-Chair (10/3, 10/5)  
Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Dianna J. Duran (10/4, 10/5)  
Sen. Lynda M. Lovejoy  
Rep. Patricia A. Lundstrom (10/4)  
Rep. John Pena  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Rep. Justine Fox-Young  
Rep. Manuel G. Herrera  
Rep. W. C. "Dub" Williams

**Advisory Members**

Sen. Joseph J. Carraro (10/4)  
Rep. Ernest H. Chavez  
Rep. Ben Lujan (10/4, 10/5)  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella  
Sen. David Ulibarri

Sen. Ben D. Altamirano  
Rep. Nick L. Salazar  
Sen. William E. Sharer

**Other Legislators in Attendance**

Rep. Henry Kiki Saavedra (10/4)

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Chase Van Gorder  
Jennie Lusk  
Larry Matlock

Regis Pecos, Assistant to the Speaker

### **Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

### **Wednesday, October 3 — Pueblo of Cochiti**

Governor Ray Trujillo, Pueblo of Cochiti, gave an introduction, after which committee members, staff and the audience introduced themselves. He was joined by Lieutenant Governor Vernon Garcia. Governor Trujillo yielded the microphone to Regis Pecos, assistant to the speaker and former governor of the Pueblo of Cochiti. Mr. Pecos gave an overview of the history of the Cochiti lands. He explained that Cochiti Lake, one of the largest man-made lakes in the world, was forced upon the Cochiti people by the Army Corps of Engineers and the Department of Reclamation. The lake, which covers one of the pueblo's most revered places of worship, was part of an experiment in private investment on reservations. The original economic development model included plans for a community of 40,000 people by taking almost half of the Cochiti homelands. The lease for the development was for 99 years, and when the lease is up, the homes and land will revert to tribal ownership. After 15 years of litigation to hold the federal government liable for the loss of agricultural lands and cultural sites, the Cochiti people prevailed. The lawsuit resulted in money to be invested to reduce the higher water table caused by seepage from the dam. When the original developers filed for bankruptcy, the Bureau of Indian Affairs (BIA) was required to seek another developer. The Cochiti tribe created its own development corporation, won the contract and decreased the scope of the development from 8,000 acres to 1,000. Instead of using economic development to exploit the reservations, the Cochiti people intend to use it to support their core values, including their language and culture.

Upcoming capital outlay projects include a new health and wellness center, which will cost approximately \$1.2 million. There is a \$200,000 to \$250,000 shortfall, which the tribe will try to make up during the 2008 legislative session. The tribe's second priority is renovation of the multiuse facility. Copies of the tribe's priorities are included in a handout in the meeting file. One problem facing the tribe is the cut in funding for the Indian Health Service (IHS).

### **Tribal Infrastructure Board**

Benny Shendo, secretary of Indian affairs, and Rebecca Martinez, capital outlay manager for the Indian Affairs Department (IAD), presented this year's projects proposed by the Tribal Infrastructure Board for funding through the Tribal Infrastructure Project Fund. Twenty projects worth a total of \$16,689,000 are on the list, which is included in the meeting file. While discussing reverting funds for incomplete capital outlay projects, Mr. Van Gorder pointed out that the legislature had added a section to the capital outlay bill that sent reverted funds to the Tribal Infrastructure Project Fund instead of reverting to the general fund so that money for projects in Indian country would remain available for use in Indian country. Although a bill to make that reversion permanent was introduced by Representative Lundstrom, the bill did not pass, stalling in the Senate Indian Affairs Committee. Mr. Van Gorder suggested that similar language could be added to the 2008 capital outlay bill and indicated that Speaker Lujan had agreed to do that in

past years. Secretary Shendo explained the difference between the Tribal Infrastructure Trust Fund and the Tribal Infrastructure Project Fund, noting that the trust fund remains empty. He is currently requesting a \$10 million appropriation for each fund.

Senator Rainaldi expressed his objection to having his capital outlay money reverting to the Tribal Infrastructure Project Fund because that took the funds out of his control and out of his district. Senator Lovejoy asked about the criteria for the projects to be funded through the Tribal Infrastructure Project Fund. Secretary Shendo answered that project readiness and the capacity to leverage funding are the most important criteria considered for funding projects from the Tribal Infrastructure Project Fund.

The committee recessed for lunch and returned at 2:22 p.m.

### **Assistance to Disabled Persons — Status Update**

Ray Espinoza, director of the Office of Indian Elder Affairs for the Aging and Long-Term Services Department (ALTSD), was joined by Joseph Ray, consultant for the Native American Outreach Program of ALTSD. Mr. Espinoza explained that the Office of Indian Elder Affairs was created in 2004 as a "one-man show", which is now composed of himself, Rachel Rose as administrator and a secretary. The two primary needs of the segment of the population he serves are housing and in-home health care. Because clients at ALTSD are frail and often lack a way of leaving their homes, their needs go unmet and their voices unheard. Although New Mexico is a leader when it comes to elder care and is recognized at a national level, funding is not keeping pace with needs. New Mexico's demographics are shifting, and the percentage of people over the age of 55 will change the state's national ranking from thirty-ninth to fourth. The population of senior citizens will double in 15 years. Funding needs to double just to keep up with needs, and more than that is needed to deal with the next wave of senior citizens. Mr. Espinoza requested additional funding to expand services this year, especially for in-home care. In-home care is cheaper than nursing home care and is preferable to the vast majority of Indian elders. He said that the amount of capital outlay reversions for his programs were very small, \$2,400 last year and \$2,000 the year before that. Bureaucracy issues still plague the capital outlay projects on the Navajo Nation, causing reversions of \$100,000 per year. Mr. Espinoza provided the committee with a list of prioritized projects, which is in the meeting file.

As Mr. Espinoza answered the committee's questions, the continuing issue of the complexity of the Navajo Nation capital outlay was analyzed. Representative Begaye said that projects were often lost at the Navajo Nation unless someone hand-carried the documents from office to office, and that when chapters successfully submitted their documents, their requests were often omitted from the final list for political reasons. Mr. Espinoza said that he worked to help the tribes to increase their capacity and knowledge of the process. By appropriating more money for the next fiscal year, the legislature could help to hire a trainer to travel on-site to provide and help develop the technical expertise necessary to qualify for funding. Representative Begaye requested a list of reversions from the past five years.

Senator Ulibarri asked about the different systems for the management of federal and state funds. Mr. Espinoza responded that because there is a government-to-government relationship between the federal government and the Navajo Nation, the federal authorities refuse to disclose

the reversion rate for federal funds. Knowing the Navajo Nation's complex and inefficient process for approving capital outlay money, Mr. Espinoza thinks there must be significant undisclosed reversions at the federal level as well. Senator Rainaldi moved that the committee write a letter to the secretary of aging and long-term services asking for the dollar amounts that reverted. Representative Vaughn seconded. The motion passed with no opposition.

Mr. Ray spoke about his goal of establishing independent living centers in the Pueblos of San Felipe and Laguna, saying that \$250,000 in recurring funds would be needed. Commitments are in place for office space in both pueblos. The requested appropriation will act as seed money, allowing him to apply for other funds. The intent is for Native Americans, especially those with disabilities, to run the centers, which would provide social as well as economic benefits. Mr. Ray asked for help utilizing the capital outlay money that was authorized during the last legislative session. He repeated Mr. Espinoza's observation that those he serves prefer to remain in independent living situations at home, but that ramps, grab bars and newer bathroom designs and upgrades would be necessary. David Riley, a single parent whose daughter has visual, speech and hearing difficulties, urged the committee to provide better access to services by providing \$1 million for a facility in the Pueblo of Laguna.

Representative Begaye moved that the committee write a letter to Patrick Lopez, with a copy to Laverne Wyaco and the attorneys of the Navajo Nation, to review and streamline the ways the Navajo Nation channels money from New Mexico to its chapters and members. The letter should request President Joe Shirley's approval to allow the requests to skip the 874 review process. Senator Rainaldi seconded, and with none opposed, the motion passed.

### **Native American Workforce Training**

Betty Sparrow Doris, secretary of the Workforce Solutions Department (WSD), and Deputy Secretary Raymond Gonzales gave a presentation on the services that have been provided by the state in the past. She explained that her office had been created during the 2007 legislative session by a bill that merged the Labor Department and the Office of Workforce Training and Development. The department tries to provide meaningful services to job seekers and individuals who are incumbent workers who want to advance or change jobs. Of those that applied for services, 5,581 were placed into full-time employment. She hopes to initiate dialogue with the Navajo Nation to increase and improve service delivery, as well as increasing the leverage of money they receive from WSD. Also present were Vince Baca, director of strategic operations, and Paula Garcia, who works with staff development and also serves as the legislative liaison.

Senator Rainaldi questioned the authorization of unemployment benefits to seasonal workers, asking for a written response from Secretary Doris. Co-chair Madalena asked the secretary to examine the services being provided to the pueblos.

Following the presentation regarding Native American workshop training, the meeting recessed at 4:37 p.m.

### **Thursday, October 4 — State Capitol, Santa Fe**

The meeting was called to order by Representative Begaye at the request of Co-chair

Madalena at 9:19 a.m. in Room 307 at the State Capitol. The committee, staff and audience members introduced themselves.

### **Tribal Emergency Management**

Lieutenant Curtis Williams, emergency manager for the Mescalero Apache Fire Department, requested funding for tribal emergency management offices for all 22 tribes and pueblos. He asked for \$185,000 per tribal entity, for a total of \$4.07 million. His handout, which he read in its entirety, is in the meeting file. He said that tribal emergency responders are so busy doing their jobs that they do not have the time or staff to commit to long-range planning and coordination efforts. Difficulties include lack of cooperation from state, county and local municipalities because the federal government is supposed to be responsible for providing these services to the tribes. When other governmental entities choose to partner with tribal emergency managers, the issue of sovereignty is a complicating factor. Tribal entities also have a difficult time getting access to funding set aside by the U.S. Department of Homeland Security because they do not have the time and expertise necessary to apply. In addition, tribal emergency responders frequently have other jobs they perform for the tribe, so they are not sitting in an office waiting to respond. A tribal liaison officer would help to free up time for higher-level emergency responders to engage in planning activities. Mel Tafoya, director of special projects and emergency management for the Pueblo of Santa Clara, and Richard Martinez, assistant director of special projects for the Pueblo of Santa Clara, presented with Lieutenant Williams.

Representative Begaye asked for remedies to these problems to be part of the agenda for the meeting of the IAC on November 7, 2007. Senator Ryan asked if any federal money had been returned. Lieutenant Williams responded that \$5 million had been returned the previous year. Senator Ryan moved that the committee write a letter to the U.S. Department of Homeland Security to make exceptions to the rules to exclude tribal entities, allowing them to apply for funding for salaries and other resources. Speaker Lujan seconded the motion. Senator Lovejoy amended the motion to include a letter to the New Mexican congressional delegation requesting direct funding for tribal emergency responders. The amended motion passed with no opposition.

### **Native American Health Care Improvement Act**

Speaker Lujan and his assistant, Mr. Pecos, gave the committee an overview of the Native American Health Care Improvement Act that will be introduced during the 2008 legislative session and asked for the committee's support. Although the bill is not intended to replace the federal government's responsibility to Native Americans, it will establish a framework to address health care disparities. Included in those disparities are the lack of behavioral health care and the lack of substance abuse treatment facilities. Mr. Pecos intends to include two juvenile treatment facilities in the bill. The federal government does not consider itself responsible for Native Americans who live off-reservation. The bill would have to accommodate the needs of "urban Indians" or "off-reservation Indians". Speaker Lujan said that \$10 or \$15 million would be necessary to address the disparities.

Senator Rainaldi moved that the committee write a letter to the IHS and the secretary of the interior to remind them of their responsibilities to Native Americans, especially the lack of funding and the great need present in that population. Co-chair Madalena recommended that the letter start with an acknowledgment of the authorization, encouraging them to fund it as well.



Representative Rodella seconded the motion, which passed with no opposition.

Lieutenant Governor Alvin Warren from the Pueblo of Santa Clara told the committee that his pueblo had completed a community health assessment, funded by the Department of Health and the McCune Foundation. The 80-page document is the first time that all relevant data are available in one location. It identified alcohol and substance abuse treatment as the community's most critical need. The Pueblo of Santa Clara is one of only eight or nine tribes to have a completed assessment. The Navajo Nation and the Pueblo of San Felipe also completed an assessment.

### **Minutes**

At the conclusion of the presentation, Co-chair Madalena moved to adopt the minutes of the September 2007 meeting of the IAC. The motion was seconded and passed with no opposition.

### **Collaborative Efforts with Tribes Regarding Child Welfare Issues**

Dorian Dodson, secretary of children, youth and families, was joined at the presenters' table by Bernie Teba and Becky Valentine. Governor Richardson issued an executive order directing agencies to work with tribal entities on a consultation policy. Secretary Dodson interpreted it to mean three things: 1) it is incumbent on the Children, Youth and Families Department (CYFD) to provide the very best services; 2) CYFD must be a respectful partner in assisting tribes to develop their own delivery systems; and 3) CYFD must collaborate on issues of importance. Her handout, which she followed closely in her presentation, is in the meeting file.

The committee recessed for lunch and returned at 1:08 p.m.

### **The Changing Energy Era in New Mexico**

Art Hull, governmental affairs specialist for Public Service Company of New Mexico (PNM), and Cathy Newby, tribal relations administrator for PNM, presented PNM's need to increase rates by 16 or 17%. Their handout, "Challenges of the Changing Energy Era", is included in the meeting file. PNM currently has a rate case before the Public Regulation Commission (PRC) asking for permission to increase rates. The last rate case, almost five years ago, actually requested permission to decrease rates, Mr. Hull said. The state's demands for energy continue to increase, especially with the popularity of refrigerated air conditioning in new, larger homes. At the same time that demand has increased, the cost of oil and natural gas has also increased. The PRC also requires at least 10% of PNM's electricity to be derived from renewable sources. PNM needs to invest \$300 to \$400 million in new coal-fired power plants and wind farms in order to keep up with demand.

Senator Carraro complained about the cost of electricity for his constituents, especially with the large bonuses paid to PNM executives. Mr. Hull explained that PNM had managed to keep rates low by selling power "off-system" or out of state, but that this is now no longer sufficient in today's market. He defended the pay for PNM's top five executives, saying that in a competitive market, they could easily earn more money by taking their expertise to another company. PNM does a survey every year on the amount of their pay, which remains below the national average. Senator Lovejoy asked about the status of the Pueblo of Santo Domingo

substation. Ms. Newby responded that the project is progressing. The substation will help to prevent outages at the Pueblo of Santo Domingo's gas station and convenience store. Senator Martinez asked how much PNM collects and disburses for the "Good Neighbor" Fund. Mr. Hull responded that the shareholders match donations from customers for a total of \$700,000 each year, all of which is paid out and administered by the Salvation Army to those in need in a process similar to the Low Income Home Energy Assistance Program (LIHEAP).

### **New Domestic Violence Initiatives — Status Update**

Sharon Pino, domestic violence czar for the executive branch, gave an update on domestic violence activities, aided by deputy secretary of the IAD, Teresa Gomez. Ms. Pino's handout showed that the governor's two domestic violence initiatives for 2008 are increased penalties for domestic violence offenses against intimate partners and an amendment to the Domestic Violence Offender Treatment Fund, which would expand the definition of a domestic violence offender. Ms. Pino's handout is in the meeting file. One-half of the \$225,000 from fiscal year 2007 appropriated to CYFD for domestic violence training and education went to the New Mexico Coalition Against Domestic Violence and the other half went to the Coalition to Stop Violence Against Native Women. Ms. Pino has been visiting the programs to see the challenges they face. The biggest of those is getting full faith and credit for enforcing orders of protection from out of state, and getting other states to enforce New Mexico's orders for protection. The State and Tribal Judicial Consortium is working on a cover sheet for these orders of protection to show that they are valid in other jurisdictions. CYFD's total budget for domestic violence funds and programs for fiscal year 2008 is over \$12 million. CYFD has contracts with 40 providers. Clients served in fiscal year 2007 include 6,498 adult victims/witnesses, 2,910 children victims/witnesses and 3,203 batterers or perpetrators.

An update on House Memorial 94, which requires a study of domestic violence against Native American women, was presented by Amber Carillo of the Pueblo of Laguna. She said that tribal consultations took place on September 19, and the biggest issue is the administration of funds.

Representative Vaughn pointed out that New Mexico has a serious domestic violence problem and asked what is being done to protect senior citizens. Ms. Pino responded that the CYFD and the ALTSD are discussing a collaboration through existing funds to hire an elder abuse coordinator to collect data and come up with ways to help that population.

Following the presentation regarding domestic violence, the meeting recessed at 3:21 p.m.

### **Friday, October 5 — Pueblo of San Felipe**

The meeting was called to order by Co-chair Madalena at 9:22 a.m. in the Hollywood Casino at the Pueblo of San Felipe. Governor Michael T. Sandoval offered an opening prayer, followed by introductions of the members and staff.

Governor Sandoval gave a brief history of the Pueblo of San Felipe, stressing the importance of using and preserving Keres, the pueblo's native language. The pueblo's conservative attitude toward its culture and language is one reason that so many young people

still speak Keres first and English second. Once appointed by spiritual leaders, tribal council members serve life terms, while governors serve one-year terms. The all-male tribal council meets twice a month. Bruce Garcia, tribal administrator, explained that he makes sure that community members have good water and wastewater infrastructure. He enjoys working with health and education, as well as services to the elderly. One success in the health care arena has been to bring in more than 30 staff members to work in the community so their people do not have to travel to Albuquerque or Santa Fe for treatment. The pueblo still needs to develop a more extensive law enforcement system and currently has only six officers. The pueblo is developing a contemporary court system along with other southern pueblos. Lieutenant Governor Joseph Sandoval introduced himself and welcomed the committee. Other Pueblo of San Felipe staff included Raymond Sanchez, Angel Edward, Judy Tenorio, Maxine Velasquez, Darlene Valencia and Dr. Charles Kaplan. Ted Garcia, a public administrator for the tribe, explained that it is seeking a stop on the Rail Runner's route. Mr. Garcia suggested formalizing the requirement for tribal consultation between the pueblo and the Department of Transportation. The \$.17 per gallon of tax charged for each gallon of gas at the pueblo's facility goes to pay off the wastewater treatment plant, which was built to create a system of regional wastewater rather than merely a series of individual septic tanks.

Dr. Kaplan presented the state of the tribe's educational resources, which include a new library, internet access for adults and youth, interlibrary loans, book clubs and GED classes. The pueblo has dedicated \$140,000 of tribal funds for post-secondary scholarships thus far. Dr. Kaplan said that 125 Pueblo of San Felipe students attend Bernalillo High School while 90 go to the Santa Fe Indian School. He told the committee that every senior at Bernalillo High School was told to apply to the Community College of New Mexico, where acceptance is no problem. However, most were assigned to developmental programs, where tribal students risk using scholarship funds before getting into regular courses. Further, Bernalillo High School requires only 23 units for graduation, whereas other districts require 29. Even the best students at Bernalillo are not accepted at good schools because they do not have three years of science or four years of math prior to graduation. Preparation is a problem, he said, as is the "disconnect" between the schools and the pueblo, which results in the pueblo having no direct input into the curriculum for its children. Adequate academic counseling is not available for tribal students. Senator Rainaldi moved that the committee send a letter to the Public Education Department to make sure the students have the books needed to proceed and do better. Representative Vaughn seconded the motion, which passed with no objection.

Mark Simone, director of health for the pueblo, asked the committee members to encourage New Mexico's congressional delegation to override the recent veto of SCHIP funds. He stressed the need to maintain a community-based clinic. Senator Rainaldi moved that the committee send a letter to the proper parties concerning the disparity of funding in the 638 Public Law, requesting a response. Representative Vaughn seconded and the motion passed. Senator Lovejoy moved that the committee write a letter to Governor Richardson and the House Memorial 35 Committee to maintain the gas tax as it is. Senator Rainaldi seconded and the motion passed with no opposition.

### **Health Care Reform**

Ronald Reid, Ph.D., tribal liaison for the New Mexico Department of Health, and

Roxanne Spruce-Bly, chief executive officer of the New Mexico Native American Health Council, gave a presentation on the American Indian Health Advisory Committee. The committee consists of 15 voting members nominated by the All Indian Pueblo Council, the Navajo Nation, the Jicarilla Apache Nation, the Mescalero Apache Tribe and designated off-reservation organizations within the state of New Mexico. So far, 10 members have been appointed. Executive Order 2005-004 requires executive state agencies to adopt tribal consultation plans with input from the 22 Indian tribes and pueblos. It was invoked for the first time for the "Health Coverage for New Mexicans" initiative. Dr. Reid's handout, "Native American Health", is in the meeting file.

Committee members discussed ways to ensure that other relevant bodies are made aware of the issue of universal health care coverage and of Speaker Lujan's Native American Health Care Improvement Act bill.

### **Adjournment**

On a motion by Senator Rainaldi, seconded by Representative Vaughn, the committee adjourned at 12:50 p.m.

**Revised: October 30, 2007**

**TENTATIVE AGENDA  
for the  
SIXTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**November 5-7, 2007**  
**Pueblo of Taos, New Mexico**  
**Pueblo of Pojoaque, New Mexico**  
**Santa Fe, New Mexico**

**Monday, November 5 — Pueblo of Taos**

- |            |  |
|------------|--|
| 10:00 a.m. | <b>Call to Order</b>   |
| 10:05 a.m. | <b>Pueblo of Taos — Status Update</b><br>—Gilbert Suazo, Sr., Governor<br>—Frederick Lujan, Sr., Lieutenant Governor   |
| 11:00 a.m. | <b>Gambling Addiction Services</b><br>—Daniel Blackwood, The Evolution Group<br>—Kandace Blanchard, Secretary, New Mexico Council on Problem Gambling (Invited)<br>—Representative, Responsible Gaming Association |
| 12:00 noon | <b>Lunch</b>   |
| 1:00 p.m.  | <b>Mental Health for Native American Adolescents</b><br>—Howard Spiegelman, Executive Director, New Mexico Alliance for School-Based Health Care   |
| 2:00 p.m.  | <b>Subprime Mortgage Lending</b><br>—Bill Verant, Director, Financial Institutions Division, Regulation and Licensing Department   |
| 3:00 p.m.  | <b>Revenue Sharing for Non-Gaming Tribes</b><br>—Craig Quanchello, Governor, Pueblo of Picuris   |
| 4:00 p.m.  | <b>Recess</b>  |

**Tuesday, November 6 — Pueblo of Pojoaque**

9:00 a.m.      **Call to Order**

9:05 a.m.      **Pueblo of Pojoaque — Status Update**

—George Rivera, Governor

—Linda Diaz, Lieutenant Governor

10:30 a.m.      **Formal State Recognition of Native American Tribes**

—Teresa Gomez, Deputy Secretary of Indian Affairs

—Gary King, Office of the Attorney General

11:30 a.m.      **Diné College Diné Environmental Institute**

—Curtis Benally, Vice President, Diné College

—Marnie Carroll, Diné College

—Annette Brown, Three Stars Consulting

12:00 noon      **Lunch**

1:00 p.m.      **Transportation Technical Committee — House Memorial 35 Report**

—Rhonda Faught, Secretary of Transportation

2:00 p.m.      **Recap of Indian Education Act Implementation**

—Nancy Martine-Alonzo, Assistant Secretary for Indian Education

—Benjamin Atencio, Chair, New Mexico Indian Advisory Council

3:00 p.m.      **Indian Water Rights Settlements — Status Update**

—John D'Antonio, State Engineer, and Secretary, Interstate Stream Commission

—Gregory C. Ridgley, Deputy Chief Counsel, Office of the State Engineer

4:00 p.m.      **Recess**

**Wednesday, November 7 — State Capitol, Room 322**

9:00 a.m.      **Call to Order**

9:05 a.m.      **Higher Education Department — Update**

—Dr. Reed Dasenbrock, Secretary of Higher Education

10:00 a.m.      **Indian Affairs Department — Legislative Update**

—Benny Shendo, Jr., Secretary of Indian Affairs

11:00 a.m.      **Endorsement of Legislation**

1:00 p.m.      **Adjourn**

**MINUTES  
of the  
SIXTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**November 5-7, 2007  
Pueblo of Taos, New Mexico  
Pueblo of Pojoaque, New Mexico  
Santa Fe, New Mexico**

The sixth meeting of the Indian Affairs Committee (IAC) for the 2007 interim was called to order by Senator John Pinto, co-chair, at 10:30 a.m. in the auditorium at the Pueblo of Taos community center. Senator Pinto asked that Representative Roberto "Bobby" J. Gonzales chair the meeting. Representative Gonzales requested a moment of silence for Representative Manuel G. Herrera, who had recently passed away.

**Present**

Rep. James Roger Madalena, Co-chair  
Sen. John Pinto, Co-chair  
Sen. Rod Adair (11/5, 11/6)  
Rep. Ray Begaye (11/7)  
Sen. Dianna J. Duran  
Sen. Lynda M. Lovejoy  
Rep. Patricia A. Lundstrom  
Rep. John Pena  
Sen. Lidio G. Rainaldi (11/6, 11/7)  
Sen. Nancy Rodriguez (11/6, 11/7)  
Rep. Gloria C. Vaughn

**Advisory Members**

Sen. Ben D. Altamirano (11/7)  
Rep. Ben Lujan  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella  
Rep. Nick L. Salazar

**Absent**

Rep. Justine Fox-Young  
Sen. John C. Ryan  
Rep. W. C. "Dub" Williams

Sen. Joseph J. Carraro  
Sen. William E. Sharer  
Sen. David Ulibarri

**Other Legislators in Attendance**

Rep. Roberto "Bobby" J. Gonzales (11/5)

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Chase Van Gorder  
Jennie Lusk  
Larry Matlock

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

## **Monday, November 5 — Pueblo of Taos**

### **Pueblo of Taos — Status Update**

After an invocation by Henry Lujan, the committee members were welcomed by Kelvin Mondragon, who apologized for the absence of Governor Suazo, who was in Washington, D.C., and of other tribal officials who were attending a funeral. Mr. Mondragon introduced the tribal directors and the assistant tribal administrator and distributed a handout, "Taos Pueblo: A Homeland, Cultural Stronghold and World Heritage Site". Mr. Mondragon reviewed a number of issues on behalf of Governor Suazo. Uranium mining is opposed because of the danger to an aquifer that provides drinking water for 15,000 people. Hundreds of abandoned uranium mines have not been cleaned up, a situation that cannot be allowed to happen again. The proposed Desert Rock power plant between Farmington and Shiprock is opposed because it will pollute the wilderness areas, as well as the area's drinking water. Sulphur and nitrogen have caused a marked decline in visibility and air quality. Although Sithe Global has promised to lower some emissions, it has not promised any dramatic decrease in the plant's output of carbon dioxide, a greenhouse gas responsible for global warming. The cleanup and transfer of Fort Wingate has the pueblo's support because of the valuable role the land can play for the people of the Pueblo of Zuni and the Navajo Nation. He also expressed support for the food gap task force and the Native American arts task force that had been requested by memorials during the 2007 legislative session.

Mr. Mondragon was joined by acting tribal administrator Rosanne Bernal to discuss the pueblo's capital outlay priorities. Its first priority is the repair of the community drainage system. The centuries-old traditional system was severely damaged in 2003, 2005 and 2006. Because of water-sharing agreements, the pueblo cannot meet its goal of bringing 3,000 acres of its historically irrigated acreage back into production by 2015. In addition, the pueblo seeks the support of the IAC for the adoption of a draft of a water settlement bill that will be introduced in 2008. Director Reba Suazo presented the pueblo's second capital outlay priority. The pueblo currently has 100 miles of dirt roads and needs road maintenance equipment. She noted that the Indian Health Service (IHS) clinic had seen an increase in respiratory diseases among youth and elders due to dust from roads that need to be compacted. The need for road maintenance is greatest along school bus routes. The third priority is a new judicial complex, which would house tribal courts and law enforcement and detention facilities. Currently, the tribal court is five miles away from the police department, and the detention facility is only sufficient to hold a suspect for a maximum of 72 hours. Prisoners have been sent to the Taos County facility, but when that is full, some are sent to Ignacio, Colorado, if there is room available there. The University of New Mexico (UNM) Law Center will help to plan the personnel and services housed in the new complex. The tribe's fourth priority is a new visitors' center to welcome properly those that come to see a UNESCO world heritage site and national historic landmark, which has been continuously inhabited for over 1,000 years. The tribe closes the pueblo during tribal ceremonies like the funeral held this morning. The entrance is also closed to nontribal members for 10 weeks from late winter to early spring. A visitors' center located just outside the entrance could remain



open when ceremonies are held or during other times when the pueblo is closed to the public. Justin Foster, division director for natural resources, introduced another request for the purchase of two type 6 wildland firefighting engines, which cost \$80,000 each.

Lillian Romero, director for the senior citizens center, was joined by Ray Espinoza to ask for funds for a new facility. The current center has insufficient space, which means that many seniors receive home delivery of their meals, depriving them of the opportunity to socialize. The floor has buckled and the kitchen needs renovation. Construction will cost \$1.2 million, of which \$300,000 is currently available. Mr. Espinoza noted that the majority of players in casinos are elderly; for this reason, profits from casinos should be used to build senior citizens centers. Lieutenant Governor Frederick Lujan, Sr., explained that the income from the pueblo's very small casino was already dedicated.

Ms. Nakai, division director for health and community services, gave the committee a binder of information for later review. She said that the federal budget cuts to the IHS will affect many of her clients, because for many of them it is their only health care provider. She also mentioned that the diabetes program would expire in 2008 without new funding and asked for the committee's support.

#### **Mental Health for Native American Adolescents**

Howard Spiegelman, executive director of the New Mexico Alliance for School-Based Health Care, and Regina Begaye Roanhorse, project manager for the Kellogg Policy Program for Youth, gave a PowerPoint presentation and showed a video made by students at the Pueblo of Laguna. Mr. Spiegelman listed several challenges facing Native Americans who need mental health care. IHS facilities have a waiting period between two and six months. Parents have to leave work to take their children out of school to go to a clinic. Because providers are constantly rotating every year or two, there is a lack of trust among the patients. Transportation in rural areas is a difficulty. Native American communities are often very small, and the lack of privacy in clinics deter many patients from seeking treatment, knowing their neighbors will gossip about them. The solution to many of these problems lies in school-based health clinics. Out of 85 school-based health clinics around the state, 31 serve Native American students. The video presentation showed actual students working in a teen center to identify and help other students who might be considering suicide. This peer-to-peer program has been successful. One statistic included in the video is that the suicide rate for young Native Americans is three times that of white youth, which affects how well they perform in school.

#### **Subprime Mortgage Lending**

William J. Verant, director of the Financial Institutions Division of the Regulation and Licensing Department, presented the current issues regarding payday loans and subprime mortgage lending. Representative Lundstrom joined him at the presenters' table. Mr. Verant listed the top five examination findings regarding subprime mortgage lending: mortgage fraud against investors/lenders, unregistered loan originators, kickback fees and fee splitting, undisclosed fees and consumers' unfamiliarity with documents, terms and paperwork. Mr. Verant said that the most common tactic to qualify consumers for home loans was outright mortgage fraud, substituting "stated income" for the actual income. He also gave details of some of the predatory lending practices that exist, including offering a higher interest rate when the client

qualifies for a lower rate, or charging a fee for "finding" a loan for a well-qualified but financially ignorant client who could simply get that loan from a local bank. Another predatory practice that loan brokers use is to write a loan so that the payment does not include interest, taxes and insurance on the property. The uninformed think their taxes are being paid. When the taxes and insurance come due, they cannot pay and are in jeopardy of losing the home, or their house burns down and they find out they do not have insurance. Most of these clients are too poor to hire lawyers and cannot pursue legal remedies. The proposed loan brokers act focuses on brokers and loan originators, but it does not provide specific remedies to consumers who have financial products they cannot afford. Representative Lundstrom explained that legislation would be submitted for the committee's endorsement on November 7, 2007.

### **Minutes**

Upon a motion by Representative Rodella, seconded by Representative Vaughn, the committee approved without objection the minutes from the October 2007 meeting of the IAC.

### **Revenue Sharing for Non-Gaming Tribes**

Governor Craig Quanchello of the Pueblo of Picuris thanked the legislators for the capital outlay funds used to renovate the tribal administration buildings and to purchase a road grader, fire truck and other equipment. Governor Quanchello explained that his community is in a remote area that cannot attract gaming resources. Without the pueblo's enterprise programs, many basic services like routine health care, road maintenance, sanitary projects and internet access would be lacking. Because of the lack of services, many people are forced to move to other areas of the state. Many youth move because they do not think they can be successful on the land where they were raised. Once they leave, it is hard for them to return. Governor Quanchello requested general fund resources to be earmarked for non-gaming tribal communities. An increase in capital outlay for Native Americans in rural communities would also be helpful. He asked for an increase in the amount of emergency funding available for the New Mexico Finance Authority. He explained that the Pueblo of Picuris is unique in that there are 3,000 nontribal homes on tribal land, including the communities of Penasco, Huerito and Chavazar. The governor asked the committee to encourage the economic development and tourism departments to create more opportunities for non-gaming communities.

Representative Madalena told the governor that if the pueblo would invite the IAC to hold a meeting there, the committee would have no objections. Governor Quanchello told the committee members they would be welcome to hold a meeting there.

Following the presentation by Governor Quanchello, Representative Gonzales recessed the meeting at 3:24 p.m.

### **Tuesday, November 6 — Pueblo of Pojoaque**

The sixth meeting of the IAC for the 2007 interim was called back into session by Senator Pinto, co-chair, on Tuesday, November 6, 2007, at 9:15 a.m. at the tribal offices of the Pueblo of Pojoaque.

### **Formal State Recognition of Native American Tribes**

Deputy Secretary of Indian Affairs Teresa Gomez, general counsel for the Indian Affairs Department (IAD), Stephanie Kiger and Attorney General Gary King presented their report regarding formal state recognition of Indian tribes, which report was requested by Senate Joint Memorial 42 passed during the 2007 legislative session. Ms. Gomez recognized the contribution to the report by Nick Madison, a third-year law student at Harvard who had served as an intern at the IAD. The preliminary report lacks final conclusions and recommendations because the memorial asked only that the IAD and the Office of the Attorney General examine the impacts of formal state recognition. None of the tribes surveyed during the preparation of the report recommended that the state embark on any sort of formal recognition process. Currently, New Mexico does not formally recognize any tribes, although it does have government-to-government relations with them. Ms. Gomez noted that if the state considers formal recognition, the process would be very complex and would affect many tribes. Also, states that have recognized tribes focus their efforts on non-federally recognized tribes. Ms. Gomez covered the practices in other states that are included in the report. She questioned the need for formal recognition of any tribes, especially those that already have federal recognition. Attorney General King complimented the IAC, saying that committees are more effective now than when he was a state representative. He agreed with Ms. Gomez' conclusions and in view of the complex issues, his office does not recommend that the state develop a mechanism for recognition. Ms. Gomez noted that as far as she can see, there is nothing that precludes the federally recognized tribes from gaining access to benefits from the state. Attorney General King said there is very little to be gained by state recognition because the state already interacts with tribes on a government-to-government basis.

#### **Diné College Diné Environmental Institute**

Curtis Ray Benally, vice president for institutional advancement at Diné College, Marnie Carroll of the Diné College Environmental Institute and Annette Brown of Three Stars

Consulting addressed the committee regarding the proposed Diné College Diné Environmental Institute and the associated \$215,000 funding request. Mr. Benally explained that the environmental institute was culturally important to the Diné people because it is an aspect of *hozhou*, a philosophy that requires human life to be in harmony with the universe and the earth, based on the four sacred elements of earth, water, air and light. Ms. Carroll said that the initiative comes at a significant time because the United States is in the middle of a push for national energy independence. Increasing ozone levels, carbon dioxide emissions and carbon trading issues need to be considered by the tribes and states. Water resources are also declining in quality and quantity. Erosion issues and dust levels impact snowpack, which melts earlier each year. She predicted an accelerated migration from the reservation and out of state because of the lack of economic development opportunities, as well as the loss of plants and culturally significant species. This loss of agricultural viability and anticipated decline of the environment will increase health costs. She said that 47 Native American students had done research at Diné College, working with local communities, and she expects that number to increase with their partnership with New Mexico State University, UNM and New Mexico Tech.

#### **Transportation Technical Committee — House Memorial 35 Report**

Robert Ortiz, deputy secretary of transportation for operations, and Representative Lundstrom presented the committee with copies of the Transportation Technical Committee's final report as required by House Memorial 35, as well as a letter from Secretary of Transportation Rhonda Faught about the U.S. Highway 491 project and a separate report entitled, "House Memorial 35: Sustainable Funding Strategies". The report shows that, because of decreasing federal revenue streams and the increase in the cost of materials, the current funding will not sustain New Mexico's needs. More funding will be required at the state and federal levels. Mr. Ortiz pointed out that not keeping up with authorized spending levels would put the Highway Trust Fund "in the red" by \$4.3 billion by 2009. The decline in federal dollars could be between \$100 million and \$150 million. It was reported that truck traffic is doing significant damage to the state's highways. A tractor-trailer rig carrying a legal load of 86,000 pounds does as much damage as 38,000 passenger cars. Mr. Ortiz expects a traffic growth rate of 81% in 21 years. He then explained the dramatic increase in the cost of materials that has caused many cost overruns in the department's projects. He noted that some neighboring states are experiencing 80% increases in the cost of construction. The cost of asphalt has gone up 92%. The Department of Transportation has managed to keep some costs down by reducing the thickness of pavement used on the shoulders of many roads. The use of design options has put the department in the top five nationwide for efficient use of resources. Mr. Ortiz' handout has a chart showing the cost of gas in each state, along with the gasoline tax charged by each state. There is no correlation between high gasoline prices and high gasoline taxes. New Jersey has the third lowest tax and New York has the third highest, yet their prices are almost exactly the same. He explained that in New Mexico, 76% of the money collected from the 17 cents-per-gallon road tax goes into the State Road Fund and 24% goes into the Local Government Fund. In order to plug the hole left by diminishing federal funds, he recommended dedicating the road excise tax to the State Road Fund, as well as initiating a registration surcharge based on the weight of the vehicle being registered. Also, the department wants to dedicate the gross receipts taxes on state highway projects to go into the State Road Fund instead of the general fund, which would generate \$14 million.

### **Recap of Indian Education Act Implementation**

Nancy Martine-Alonzo, assistant secretary for Indian education, reviewed three documents: one comparing 2007 amendments to the Indian Education Act, a fact sheet on education programs being funded through initiatives of the Public Education Department (PED) and draft minutes of the most recent government-to-government meeting mandated by the 2007 amendments. Ms. Martine-Alonzo reported that the 2007 amendments broadened the responsibility for Indian education programming to include preschool through age 20, as opposed to K-12 and noted that the PED has been communicating with the Higher Education Department (HED) and will provide representation on the New Mexico Tribal Higher Education Commission. She also noted that funds for expansion of some areas was diverted when the rural education initiative, matched by private funds through Save the Children, was adopted. The urban Indian representatives have become active with the Indian Education Advisory Council, a move that will increase representation of tribal members who are not based on a reservation. Ben Atencio was elected chair of the Indian Education Advisory Council and Kevin Shendo is vice chair. The department is coordinating with bilingual programs.

### **Indian Water Rights Settlements — Status Update**

Estevan Lopez from the Interstate Stream Commission and John D'Antonio, state engineer, were joined by Myron Armijo, Indian affairs liaison, and Bill Hume from the office of Governor Richardson, as well as Gregory C. Ridgley, deputy chief counsel for the Office of the State Engineer. Mr. D'Antonio explained that he is required to report by November 15 of each year to the IAC and the Legislative Finance Committee on three subjects: settlements, distribution of funds and recommendations for appropriations to fund necessary projects. He presented the committee with a handout entitled "2007 Indian Water Rights Settlement Fund Report" and a handout entitled "Funding Proposal for Yellowman Siphon Phase III Rehabilitation Project". He noted that the United States has not signed any of the three settlement agreements, and that will not change until Congress has passed specific settlement legislation. The Navajo Nation settlement on April 19, 2005 would use the waters in the San Juan River Basin to form a Navajo-Gallup water supply project to bring water to Navajo and non-Indian communities in northwest New Mexico.

Federal legislation has been introduced by members of the New Mexico delegation. Mr. D'Antonio testified in Washington, D.C., on that legislation before the House Subcommittee on Water, Power and Natural Resources. It was conducted by the chair of the Interstate Stream Commission. The hydrologic determination of the Upper Colorado River Commission showed that there was sufficient water in the basin to allow the settlement to go forward. Mr. Hume confirmed that Governor Richardson is ready to support the settlement. Mr. D'Antonio added that his office had put in a capital outlay request for \$15 million, based on the \$25 million he asked for last year, of which he received \$10 million.

### **Pueblo of Pojoaque — Status Update**

Committee members were welcomed by Lieutenant Governor Linda Diaz. She presented the members with a list of their capital outlay projects that still require funding, including a ceremonial facility, a wellness center, a boys' and girls' club, a daycare project, the Poeh Cultural Center/Museum, a water and wastewater treatment system, the SOLAREC renewable energy project and a senior citizens center.

Following the Pueblo of Pojoaque status update, Representative Madalena recessed the meeting at 4:55 p.m.

### **Wednesday, November 7 — Room 322, State Capitol**

The sixth meeting of the IAC for the 2007 interim was called back into session by Senator Pinto, co-chair, on Wednesday, November 7, 2007, at 9:20 a.m. in Room 322 at the State Capitol. Gil Vigil, former governor of the Pueblo of Tesuque, gave an invocation.

### **Higher Education Department — Status Update**

Dr. Reed Dasenbrock, secretary-designate of higher education, gave a PowerPoint presentation on American Indian students in higher education and the Indian Education Act. The principal goal for American Indian students is equity in educational attainment and achievements. Dr. Dasenbrock stated that American Indian students should enter and graduate from higher education proportionate to their percentage in the New Mexico population as a whole. He reviewed enrollment progress to date: American Indian students are about nine percent of enrollment compared with a 10% proportion of the entire population. He believes the state is on track to achieve proportionality by the fall of 2009. The percentage of American Indian students actually graduating is not as positive, however, being roughly 40% of what they should be at the bachelor's, graduate and professional degree levels. This is partly due to the fact that American Indian enrollment is focused in the two-year sector, where graduation rates are proportionate. The higher education community must work on increasing the transfer rate from two-year to four-year institutions and on retention and graduation rates at four-year institutions. One question raised by Dr. Dasenbrock is whether the four tribal colleges in New Mexico are considered a part of the state's higher education. The legislature needs to provide guidance in this area. In regard to the Indian Education Act, the act is silent regarding the role of the HED. Speaker Lujan moved that the secretary of higher education and the IAD coordinate to form a policy regarding the role of the HED in implementing the Indian Education Act. Representative Vaughn seconded the motion, which passed without objection.

### **Indian Affairs Department — Status Update**

Secretary of Indian Affairs Benny Shendo, Jr., briefed the committee on the activities of the department. The task force on cultural competence education requirements in certain health education programs has been formed and should issue a report before the 2008 legislative session. The department is working to implement the Reburial Grounds Act passed during the 2007 legislative session (Chapters 299 and 300) and public hearings should be conducted in the spring of 2008. The study of Native American domestic violence against women requested by House Memorial 94 during the 2007 legislative session could not be carried out due to the lack of data. The deadline for submission of applications for Native American behavioral health services is December 14. Work is being done on revising the proposed Native American Health Care Improvement Act and a tribal consultation meeting was scheduled to be held on November 27. None of the other legislative initiatives submitted by the IAD to the governor were approved for the 2008 legislative session.

Rebecca Martinez, capital outlay manager for the IAD, briefed the committee on the status of capital outlay projects being administered by the department. In fiscal year 2007, the department closed 126 projects worth more than \$10 million. At the present time, the department is administering 649 projects worth a total of just over \$93 million. Of this amount, more than \$52 million has been encumbered with more than \$7 million having been disbursed. There are currently 98 (\$13.5 million) projects for which joint powers agreements have been approved and returned to tribal entities for execution. Seventy-nine projects (\$11.4 million) are delinquent in their scopes of work. Ninety-three projects will expire as of June 30, 2008 and legislators will get letters if those projects are within their districts. Ms. Martinez described ongoing efforts to streamline the approval process for projects located within the Navajo Nation. She also reviewed suggestions for reforming the process of reauthorizing capital outlay appropriations, a transition to grant agreements for some projects, participation in the infrastructure capital improvement planning process, tribal training and reversions.

### **Endorsement of Legislation**

Mr. Van Gorder presented a folder of proposed legislation to be considered for endorsement by the committee (see attached sheet) and explained the process of prefilming and cosponsoring bills for the 2008 legislative session. Representative Lundstrom indicated she was withdrawing Item K as it was duplicative of Item S and moved approval of Items F through T. The motion was seconded by Senator Lovejoy and approved without objection. Senator Lovejoy moved approval of Item A. The motion was seconded by Representative Vaughn and approved without objection. Senator Pinto moved approval of Item B. The motion was seconded by Representative Lundstrom and approved without objection. Representative Lundstrom moved approval of Item C. The motion was seconded by Senator Lovejoy and approved, with Senator Rainaldi objecting. Representative Salazar requested that Item D be removed from the list of bills to be considered for endorsement. Item E regarding restrictions on uranium mining was discussed and Senator Lovejoy agreed to remove the restrictions related to aquifers. Senator Pinto moved approval of Item E as amended. The motion was seconded by Representative Pena and approved, with Senator Duran objecting. The committee also considered a bill to be proposed by Representative Lundstrom to impose a surtax on uranium mining to be used to clean up contaminated sites, and the Native American Health Care Improvement Act to be sponsored by Speaker Lujan. Committee members agreed to endorse these two bills in concept, but they requested that final drafts of the bills be circulated to voting members before deciding on an endorsement.

### **Adjournment**

There being no further business before the committee, the sixth meeting of the IAC for the 2007 interim was adjourned at 12:55 p.m.

**INTERIM INDIAN AFFAIRS COMMITTEE - PROPOSED 2008 LEGISLATIVE ENDORSEMENTS**

<b><u>Bill ID</u></b>	<b><u>202 #</u></b>	<b><u>Type</u></b>	<b><u>Sponsor</u></b>	<b><u>Description</u></b>
A	170486.3	Bill	Rep. Lundstrom	Subprime Mortgage Lending
B	170579.1	Bill	Sen. Pinto	Native American Veterans Tax Refunds
C	170580.1	Bill	Sen. Lovejoy	Capital Outlay - TIF Reversions
D	170585.1	Resolution	Rep. Salazar	Cap on Capital Outlay Proposals
E	170586.3	Bill	Sen. Lovejoy	Uranium Mining Drilling
* * * * *				
F	170302.1	Memorial	Sen. Ryan	Navajo-Gallup Water Supply Pipeline
G	170483.2	Memorial	Rep. Pena	State Superfund Districts
H	170457.3	Memorial	Rep. Pena	"Tour of the Nations" Bicycle Event
I	170604.1	Memorial	Rep. Lundstrom	Native American Arts & Crafts Task Force
U	170679.1	Memorial	Sen. Lovejoy	Investigate Native American Telecommunications Tax Collections
* * * * *				
J	170300.1	Approp.	Sen. Pinto	Eastern Navajo Agency Kidney Study (\$100,000)
K	170449.2	Approp.	Rep. Madalena	Tribal Transportation Projects (10% of Gaming Revenue)
L	170456.2	Approp.	Rep. Pena	McKinley County Outdoor Recreation (\$25,000)
M	170488.1	Approp.	Rep. Begaye	NMSU tribal cooperative extension service (\$500,000)
N	170583.2	Approp.	Rep. Lundstrom	Uranium Health Study (\$200,000)
O	170587.1	Approp.	Rep. Madalena	Independent Living Centers (\$250,000)
P	170588.1	Approp.	Rep. Begaye	Tribal Emergency Management (\$4,070,000)
Q	170589.1	Approp.	Rep. Begaye	Indian Education Act (\$2,500,000)
R	170621.1	Approp.	Sen. Lovejoy	Tribal Emergency Management (\$450,000)
S	170644.1	Approp.	Sen. Lovejoy	Native American Arts & Crafts (\$300,000)
T	170680.1	Approp.	Rep. Pena	Native American Student Suicide Prevention (\$100,000)

**Revised: November 6, 2007**



### **INTERIM INDIAN AFFAIRS COMMITTEE - 2008 LEGISLATIVE ENDORSEMENTS**

<b><u>202 File #</u></b>	<b><u>Type</u></b>	<b><u>Sponsor</u></b>	<b><u>Description</u></b>
170486.1	Bill	Rep. Lundstrom	Subprime Mortgage Lending (amends the Home Loan Protection Act to require certain underwriting criteria for all home mortgages).
170579.1	Bill	Sen. Pinto	Native American Veterans Tax Refunds (amends the statute of limitations to permit veterans to claim refunds of state income taxes mistakenly withheld from the pay of military who lived on reservations).
170580.1	Bill	Sen. Lovejoy	Capital Outlay - TIF Reversions (puts all reversions for Indian country capital outlay projects into the Tribal Infrastructure Project Fund).
170586.5	Bill	Sen. Lovejoy	Uranium Mining Drilling (prohibits exploratory and extraction drilling within 1,000 feet of existing dwellings).
170637	Bill	Rep. Lundstrom	Uranium Site Cleanup & Funding (endorsed in concept; would impose a surtax on severance and processing of uranium and creates Uranium Legacy Fund for state-funded cleanup activities; Uranium Legacy Cleanup Act)
170767	Bill	Speaker Lujan	Native American Health Care Improvement Act (endorsed in concept; ask Jennie) * * * * *
170302.2	Memorial	Sen. Ryan	Navajo-Gallup Water Supply Pipeline (support federal funding of pipeline project).
170483.2	Memorial	Rep. Pena	State Superfund Districts (request DOE and EMNRD to study concept of state "superfund" districts).
170457.3	Memorial	Rep. Pena	"Tour of the Nations" Bicycle Event (request state agencies to support second annual tour).
170679.1	Memorial	Sen. Lovejoy	Investigate Native American Telecommunications Tax Collections (request AG, PRC and TRD to investigate illegal collection of state and local taxes by telecommunications companies for services to customers on reservations). * * * * *
170300.1	Approp	Sen. Pinto	Eastern Navajo Agency Kidney Study (\$100,000)

170449.2	Approp	Rep. Madalena	Tribal Transportation Projects (10% of Gaming Revenue)
170456.2	Approp	Rep. Pena	McKinley County Outdoor Recreation (\$25,000)
170488.1	Approp	Rep. Begaye	NMSU tribal cooperative extension service (\$500,000)
170583.2	Approp	Rep. Lundstrom	Uranium Health Study (\$200,000)
170587.1	Approp	Rep. Madalena	Independent Living Centers (\$250,000)
170588.1	Approp	Rep. Begaye	Tribal Emergency Management (\$4,070,000) (Sponsor withdrawn)
170589.1	Approp	Rep. Begaye	Indian Education Act (\$2,500,000)
170621.1	Approp	Sen. Lovejoy	Tribal Emergency Management (\$450,000)
170644.1	Approp	Sen. Lovejoy	Native American Arts & Crafts (\$300,000)
170680.1	Approp	Rep. Pena	Native American Peer-to-Peer Suicide Prevention (\$100,000)

underscored material = new  
[bracketed material] = delete

HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE  
AND THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO REAL ESTATE; PROHIBITING CERTAIN HOME LOANS;  
AMENDING THE HOME LOAN PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-21A-1 NMSA 1978 (being Laws 2003,  
Chapter 436, Section 1) is amended to read:

"58-21A-1. SHORT TITLE.--~~[Sections 1 through 14 of this~~  
~~act]~~ Chapter 58, Article 21A NMSA 1978 may be cited as the  
"Home Loan Protection Act".

Section 2. Section 58-21A-2 NMSA 1978 (being Laws 2003,  
Chapter 436, Section 2) is amended to read:

"58-21A-2. FINDINGS.--The legislature finds that:

A. abusive mortgage lending has become an  
increasing problem in New Mexico, exacerbating the loss of  
equity in homes and causing the number of foreclosures to

1 increase in recent years;

2 B. one of the most common forms of abusive lending  
3 is the making of loans that are equity-based, rather than  
4 income-based;

5 C. the financing of points and fees in these loans  
6 provides immediate income to the originator and encourages  
7 creditors to repeatedly refinance home loans; ~~[and]~~

8 D. while the marketplace appears to operate  
9 effectively for conventional mortgages, too many homeowners  
10 find themselves victims of overreaching creditors who provide  
11 loans with high costs and terms that are unnecessary to secure  
12 repayment of the loan; and

13 E. other forms of abusive mortgage lending have  
14 emerged in New Mexico, including home loans to purchase a home  
15 that include no down payment; interest-only home loans;  
16 adjustable rate home loans with an initially low teaser rate  
17 that is reset after a short period to a higher rate resulting  
18 in borrower payment shock; and adjustable rate home loans with  
19 payment increase caps but without interest rate caps that may  
20 result in negative amortization and underwriting practices such  
21 as no verification of borrower income, approval of borrowers  
22 with poor or checkered credit histories and prospective home  
23 loan payments that are an unrealistically high proportion of  
24 the borrower's monthly income. These abusive mortgage lending  
25 practices may result in an unacceptably high rate of home loan

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1 foreclosures and displacement of borrowers and their families."

2 Section 3. Section 58-21A-3 NMSA 1978 (being Laws 2003,  
3 Chapter 436, Section 3) is amended to read:

4 "58-21A-3. DEFINITIONS.--As used in the Home Loan  
5 Protection Act:

6 A. "adjustable rate home loan" means a home loan in  
7 any amount that has an initial interest rate that adjusts to a  
8 variable interest rate at the end of a specified initial period  
9 or subsequent periods of time during the remaining term of the  
10 home loan;

11 ~~[A.]~~ B. "affiliate" means a person that controls,  
12 is controlled by or is under common control with another  
13 person;

14 ~~[B.]~~ C. "bona fide discount points" means loan  
15 discount points that are knowingly paid by the borrower for the  
16 express purpose of reducing, and which in fact do result in a  
17 bona fide reduction of, the annual percentage rate otherwise  
18 applicable to the home loan; provided, however, that discount  
19 points are not "bona fide discount points" if the annual  
20 percentage rate otherwise applicable to the home loan exceeds  
21 the conventional mortgage rate by more than:

22 (1) one and one-half percentage points for a  
23 home loan secured by a first lien; or

24 (2) three percentage points for a home loan  
25 secured by a junior lien;

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1           ~~[G-]~~ D. "borrower" means a natural person obligated  
2 to repay a home loan, including a co-borrower, cosigner or  
3 guarantor;

4           ~~[D-]~~ E. "bridge loan" means a loan for the initial  
5 construction of a borrower's principal dwelling on land owned  
6 by the borrower with a maturity of less than eighteen months  
7 that only requires the payment of interest until the entire  
8 unpaid balance is due and payable;

9           ~~[E-]~~ F. "conventional mortgage rate" means the most  
10 recently published annual yield on conventional mortgages  
11 published by the board of governors of the federal reserve  
12 system as of the fifteenth day of the month immediately  
13 preceding the month in which the application for the extension  
14 of credit is received by the creditor;

15           ~~[F-]~~ G. "conventional prepayment penalty" means a  
16 prepayment penalty or fee that may be collected in a home loan  
17 and that is authorized by federal law; provided that a  
18 prepayment penalty is not a "conventional prepayment penalty"  
19 if the home loan:

20                   (1) has an annual percentage rate that exceeds  
21 the conventional mortgage rate by more than two percent; or

22                   (2) permits prepayment fees or penalties that  
23 exceed two percent of the amount prepaid;

24           ~~[G-]~~ H. "creditor" means a person who regularly  
25 makes a home loan and includes a loan broker;

1                   ~~[H.]~~ I. "high-cost home loan" means a home loan in  
2 which:

3                               (1) the contract rate exceeds the ~~[rates]~~ rate  
4 threshold; or

5                               (2) the total points and fees exceed the total  
6 points and fees threshold;

7                   ~~[I.]~~ J. "home loan" means a loan, including an  
8 open-end credit plan, other than a reverse mortgage transaction  
9 or a bridge loan, where the principal amount does not exceed  
10 the conforming loan size limit for a single-family dwelling as  
11 established by the federal national mortgage association and  
12 where the loan is secured by:

13                               (1) a mortgage or deed of trust on real estate  
14 in this state upon which there is located or there is to be  
15 located a structure:

16                                       (a) designed principally for occupancy  
17 by one to four families; and

18                                       (b) that is or will be occupied by a  
19 borrower as the borrower's principal residence; or

20                               (2) a security interest on a manufactured home  
21 that is or will be occupied by a borrower as the borrower's  
22 principal residence;

23                   ~~[J.]~~ K. "manufactured home" means a structure,  
24 transportable in one or more sections, which in the traveling  
25 mode is eight body feet or more in width or forty body feet or

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1 more in length or, when erected on site is three hundred twenty  
2 or more square feet and which is built on a permanent chassis  
3 and designed to be used as a dwelling with a permanent  
4 foundation when erected on land secured in conjunction with the  
5 real property on which the manufactured home is located and  
6 connected to the required utilities and includes the plumbing,  
7 heating, air conditioning and electrical systems contained  
8 therein. "Manufactured home" includes any structure that meets  
9 all the requirements of this subsection except the size  
10 requirements and with respect to which the manufacturer  
11 voluntarily files a certification required by the secretary of  
12 the United States department of housing and urban development  
13 and complies with the standards established under the federal  
14 National Manufactured Housing Construction and Safety Standards  
15 Act of 1974. "Manufactured home" does not include rental  
16 property or second homes or manufactured homes when not secured  
17 in conjunction with the real property on which the manufactured  
18 home is located;

19 ~~[K-]~~ L. "points and fees" means:

20 (1) all amounts payable by a borrower at or  
21 before the closing of a home loan, exclusive of any time-price  
22 differential due at closing on the loan proceeds, including:

23 (a) loan discount points or other  
24 discounts;

25 (b) loan fees, finder's fees or similar

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1 charges; and

2 (c) fees for preparation of loan-related  
3 documents; but

4 (d) does not include fees for the  
5 following purposes, if the amounts are bona fide and reasonable  
6 and paid to a person other than the creditor or an affiliate of  
7 the creditor: 1) service or carrying charges; 2) credit  
8 reports; 3) title exam, title insurance or similar purposes; 4)  
9 escrow charges for future payments of taxes and insurance; 5)  
10 fees for notarizing deeds and other documents; 6) appraisals,  
11 including fees related to any pest infestation or flood hazard  
12 inspections conducted prior to closing; 7) inspection performed  
13 prior to closing; 8) attorney fees, if the borrower has the  
14 right to select the attorney from an approved list or  
15 otherwise; 9) fire and hazard insurance and flood insurance  
16 premiums if the conditions in 12 C.F.R. s.226.4(d)(2) are met;  
17 10) tax payment services; 11) surveys; 12) flood certification;  
18 and 13) pest infestation and flood determination;

19 (2) all compensation paid directly or  
20 indirectly to a mortgage broker, including a broker that  
21 originates a loan in its own name in a table-funded  
22 transaction;

23 (3) the maximum prepayment fees and penalties  
24 that may be charged or collected under the terms of the loan  
25 documents;

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1 (4) all prepayment fees or penalties that are  
2 incurred by the borrower if the loan refinances a previous loan  
3 made or currently held by the same creditor or an affiliate of  
4 the creditor;

5 (5) the cost of all premiums financed by the  
6 creditor, directly or indirectly, for any credit life, credit  
7 disability, credit unemployment or credit property insurance,  
8 or any other life or health insurance, or any payments financed  
9 by the creditor, directly or indirectly, for any debt  
10 cancellation or suspension agreement or contract, except that  
11 insurance premiums calculated and paid on a monthly basis shall  
12 not be considered financed by the creditor; and

13 (6) for open-end loans, the points and fees  
14 included in Paragraphs (1) through (5) of this subsection that  
15 are known at or before closing plus the minimum additional fees  
16 the borrower would be required to pay to draw down an amount  
17 equal to the total credit line;

18 [~~E.~~] M. "rate threshold" means:

19 (1) for a first lien mortgage home loan, an  
20 interest rate equal to seven percentage points over the weekly  
21 average yield on comparable United States treasury securities  
22 on the fifteenth day of the month immediately preceding the  
23 month in which the loan is made; and

24 (2) for a subordinate mortgage lien, an  
25 interest rate equal to nine percentage points over the weekly

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1 average yield on comparable United States treasury securities  
2 on the fifteenth day of the month immediately preceding the  
3 month in which the loan is made;

4 ~~[M.]~~ N. "total points and fees" means the result  
5 obtained by subtracting the sum of the conventional prepayment  
6 penalties and the bona fide discount points paid from the sum  
7 of the points and fees, except that if the sum of the  
8 conventional prepayment penalties and the bona fide discount  
9 points paid exceeds two points, then only the amount that  
10 represents two points shall be subtracted; ~~[and~~

11 ~~N.]~~ O. "total points and fees threshold" means:

12 (1) for a home loan in which the total  
13 principal loan amount is twenty thousand dollars (\$20,000) or  
14 more, an amount equal to five percent of the total principal  
15 loan amount; and

16 (2) for a home loan in which the total  
17 principal loan amount is less than twenty thousand dollars  
18 (\$20,000), an amount equal to the lesser of one thousand  
19 dollars (\$1,000) or eight percent of the total principal loan  
20 amount; and

21 P. "variable interest rate" means an interest rate  
22 that changes periodically based upon a specified index plus a  
23 specified additional rate margin."

24 Section 4. Section 58-21A-4 NMSA 1978 (being Laws 2003,  
25 Chapter 436, Section 4) is amended to read:

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1 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING  
2 HOME LOANS.--

3 A. No creditor shall finance, directly or  
4 indirectly, credit life, credit disability, credit unemployment  
5 or credit property insurance, or any other life or health  
6 insurance, or any payments directly or indirectly for any debt  
7 cancellation or suspension agreement or contract, provided that  
8 nothing in this subsection prohibits the payment or receipt of  
9 insurance premiums or debt cancellation or suspension fees  
10 calculated on the unpaid balance of a home loan and paid on a  
11 monthly basis or prohibits bona fide credit property insurance  
12 required by the federal housing administration or the United  
13 States department of agriculture to be paid in a single premium  
14 to the respective federal agency. As used in this subsection,  
15 "credit property insurance" means property insurance written in  
16 connection with credit transactions under which the creditor is  
17 the primary beneficiary.

18 B. No creditor shall knowingly and intentionally  
19 engage in the unfair act or practice of flipping a home loan.  
20 As used in this subsection, "flipping a home loan" means the  
21 making of a home loan to a borrower that refinances an existing  
22 home loan when the new loan does not have reasonable, tangible  
23 net benefit to the borrower considering all of the  
24 circumstances, including the terms of both the new and  
25 refinanced loans, the cost of the new loan and the borrower's

1       circumstances.

2               C. No creditor shall make a home loan in any amount  
3 that includes or uses one or more of the following lending  
4 practices:

5                       (1) making a home loan without documenting and  
6 considering the borrower's income, credit history and assessed  
7 ability to repay the home loan according to its terms over the  
8 entire term of the loan;

9                       (2) making a home loan primarily based upon  
10 the foreclosure or liquidation value of the borrower's  
11 collateral home;

12                      (3) making a home loan where the monthly loan  
13 payment amount, including principal, interest, taxes and  
14 insurance, along with the borrower's other scheduled monthly  
15 debt payments at the time the home loan is executed exceeds  
16 fifty percent of the borrower's gross monthly income;

17                      (4) making a home loan where the borrower is  
18 required to pay only the interest on the outstanding principal  
19 of the home loan or where the required payments over the stated  
20 term of the loan are not sufficient to completely amortize the  
21 loan within the term of the loan;

22                      (5) making an adjustable rate home loan where  
23 the interest rate and payment may change more frequently than  
24 annually during the term of the loan;

25                      (6) making an adjustable rate home loan where

1 the interest rate for the initial period or subsequent periods  
2 may be increased for the next period so that the payments of  
3 interest and principal will increase by more than one and one-  
4 half percent;

5 (7) making an adjustable rate home loan where  
6 caps on payment increases are different from caps on interest  
7 rates so that the required payments may be less than that  
8 necessary to reduce principal and amortize the loan within the  
9 term of the loan regardless of interest rate adjustments; and

10 (8) making a home loan requiring a borrower to  
11 pay a penalty or premium if the borrower at any time during the  
12 term of the loan makes principal payments in addition to  
13 scheduled principal payments or pays the balance of the home  
14 loan prior to the stated end of the term of the loan."

underscored material = new  
[bracketed material] = delete

SENATE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO THE TAXATION; REQUIRING THE TAXATION AND REVENUE  
DEPARTMENT TO IDENTIFY AND NOTIFY CERTAIN TAXPAYERS OF POSSIBLE  
OVERPAYMENT OF TAXES; EXTENDING THE TIME FOR REFUND CLAIMS WITH  
RESPECT TO CERTAIN MILITARY INCOME OF NATIVE AMERICANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is  
enacted to read:

"[NEW MATERIAL] REVIEW OF RECORDS--NOTICE OF POTENTIAL  
ELIGIBILITY FOR REFUND.--

A. The department shall review income tax records  
to identify possible overpayments of tax that have been made  
with respect to income earned from service in the armed forces  
of the United States by a taxpayer who is:

(1) a resident of New Mexico;

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1 (2) an enrolled member of a federally  
2 recognized Indian nation, tribe or pueblo; and

3 (3) whose domicile during that service was on  
4 the member's or the member's spouse's reservation or pueblo  
5 grant or within the boundaries of lands held in trust by the  
6 United States for the benefit of the member, the member's  
7 spouse or the member's or the spouse's Indian nation, tribe or  
8 pueblo, subject to restrictions against alienation imposed by  
9 the United States.

10 B. The department shall send a notice detailing the  
11 possible overpayments to the identified taxpayers, pursuant to  
12 the provisions of Section 7-1-9 NMSA 1978."

13 Section 2. Section 7-1-26 NMSA 1978 (being Laws 1965,  
14 Chapter 248, Section 28, as amended) is amended to read:

15 "7-1-26. CLAIM FOR REFUND.--

16 A. ~~[Any]~~ A person who believes that an amount of  
17 tax has been paid by or withheld from that person in excess of  
18 that for which the person was liable, who has been denied ~~[any]~~  
19 a credit or rebate claimed or who claims a prior right to  
20 property in the possession of the department pursuant to a levy  
21 made under authority of Sections 7-1-31 through 7-1-34 NMSA  
22 1978 may claim a refund by directing to the secretary, within  
23 the time limited by the provisions of Subsections D, E ~~[and]~~, F  
24 and K of this section, a written claim for refund. Except as  
25 provided in Subsection J of this section, a refund claim shall

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1 include the taxpayer's name, address and identification number,  
2 the type of tax for which a refund is being claimed, the sum of  
3 money being claimed, the period for which overpayment was made  
4 and the basis for the refund. As used in this subsection,  
5 "basis for the refund" means a brief statement of the facts and  
6 the law on which the claim is based.

7 B. The secretary or the secretary's delegate may  
8 allow the claim in whole or in part or may deny the claim.

9 (1) If the claim is denied in whole or in part  
10 in writing, no claim may be refiled with respect to that which  
11 was denied but the person, within ninety days after either the  
12 mailing or delivery of the denial of all or any part of the  
13 claim, may elect to pursue one, but not more than one, of the  
14 remedies in Subsection C of this section.

15 (2) If the department has neither granted nor  
16 denied ~~[any]~~ a portion of a claim for refund within one hundred  
17 twenty days of the date the claim was mailed or delivered to  
18 the department, the person may refile it within the time limits  
19 set forth in Subsection D of this section or may within ninety  
20 days elect to pursue one, but only one, of the remedies in  
21 Subsection C of this section. After the expiration of the two  
22 hundred ten days from the date the claim was mailed or  
23 delivered to the department, the department ~~[may]~~ shall not  
24 approve or disapprove the claim unless the person has pursued  
25 one of the remedies under Subsection C of this section.

1 C. A person may elect to pursue one, but only one,  
2 of the remedies in Paragraphs (1) and (2) of this subsection.  
3 In any case, if a person does timely pursue more than one  
4 remedy, the person shall be deemed to have elected the first  
5 remedy invoked. The remedies are as follows:

6 (1) the person may direct to the secretary a  
7 written protest against the denial of, or failure ~~[to]~~ either  
8 to allow or deny the claim or portion thereof, which shall be  
9 set for hearing by a hearing officer designated by the  
10 secretary promptly after the receipt of the protest in  
11 accordance with the provisions of Section 7-1-24 NMSA 1978, and  
12 pursue the remedies of appeal from decisions adverse to the  
13 protestant as provided in Section 7-1-25 NMSA 1978; or

14 (2) the person may commence a civil action in  
15 the district court for Santa Fe county by filing a complaint  
16 setting forth the circumstance of the claimed overpayment,  
17 alleging that on account thereof the state is indebted to the  
18 plaintiff in the amount stated, together with any interest  
19 allowable, demanding the refund to the plaintiff of that amount  
20 and reciting the facts of the claim for refund. The plaintiff  
21 or the secretary may appeal from any final decision or order of  
22 the district court to the court of appeals.

23 D. Except as otherwise provided in Subsections E,  
24 ~~[and]~~ F and K of this section, no credit or refund of any  
25 amount ~~[may]~~ shall be allowed or made to ~~[any]~~ a person unless

1 as the result of a claim made by that person as provided in  
2 this section:

3 (1) within three years of the end of the  
4 calendar year in which:

5 (a) the payment was originally due or  
6 the overpayment resulted from an assessment by the department  
7 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

8 (b) the final determination of value  
9 occurs with respect to any overpayment that resulted from a  
10 disapproval by any agency of the United States or the state of  
11 New Mexico or any court of increase in value of a product  
12 subject to taxation under the Oil and Gas Severance Tax Act,  
13 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency  
14 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act  
15 or the Natural Gas Processors Tax Act; or

16 (c) property was levied upon pursuant to  
17 the provisions of the Tax Administration Act;

18 (2) when an amount of a claim for credit under  
19 the provisions of the Investment Credit Act, Laboratory  
20 Partnership with Small Business Tax Credit Act or Technology  
21 Jobs Tax Credit Act or for the rural job tax credit pursuant to  
22 Sections 7-2E-1 and 7-2E-2 NMSA 1978 or similar credit has been  
23 denied, the taxpayer may claim a refund of the credit no later  
24 than one year after the date of the denial;

25 (3) when a taxpayer under audit by the

1 department has signed a waiver of the limitation on assessments  
2 on or after July 1, 1993 pursuant to Subsection F of Section  
3 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
4 the same tax paid for the same period for which the waiver was  
5 given, until a date one year after the later of the date of the  
6 mailing of an assessment issued pursuant to the audit, the date  
7 of the mailing of final audit findings to the taxpayer or the  
8 date a proceeding is begun in court by the department with  
9 respect to the same tax and the same period;

10 (4) if the payment of an amount of tax was not  
11 made within three years of the end of the calendar year in  
12 which the original due date of the tax or date of the  
13 assessment of the department occurred, a claim for refund of  
14 that amount of tax ~~[can]~~ may be made within one year of the  
15 date on which the tax was paid; or

16 (5) when a taxpayer has been assessed a tax on  
17 or after July 1, 1993 under Subsection B, C or D of Section  
18 7-1-18 NMSA 1978 and when the assessment applies to a period  
19 ending at least three years prior to the beginning of the year  
20 in which the assessment was made, the taxpayer may claim a  
21 refund for the same tax for the period of the assessment or for  
22 any period following that period within one year of the date of  
23 the assessment unless a longer period for claiming a refund is  
24 provided in this section.

25 E. No credit or refund shall be allowed or made to

1     ~~[any]~~ a person claiming a refund of gasoline tax under Section  
2     7-13-11 NMSA 1978 unless notice of the destruction of the  
3     gasoline was given the department within thirty days of the  
4     actual destruction and the claim for refund is made within six  
5     months of the date of destruction. No credit or refund shall  
6     be allowed or made to ~~[any]~~ a person claiming a refund of  
7     gasoline tax under Section 7-13-17 NMSA 1978 unless the refund  
8     is claimed within six months of the date of purchase of the  
9     gasoline and the gasoline has been used at the time the claim  
10    for refund is made.

11             F. If, as a result of an audit by the internal  
12    revenue service or the filing of an amended federal return  
13    changing a prior election or making any other change for which  
14    federal approval is required by the Internal Revenue Code, any  
15    adjustment of federal tax is made with the result that there  
16    would have been an overpayment of tax if the adjustment to  
17    federal tax had been applied to the taxable period to which it  
18    relates, claim for credit or refund of only that amount based  
19    on the adjustment may be made as provided in this section  
20    within one year of the date of the internal revenue service  
21    audit adjustment or payment of the federal refund or within the  
22    period limited by Subsection D of this section, whichever  
23    expires later. Interest computed at the rate specified in  
24    Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on  
25    any such claim for refund from the date one hundred twenty days

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1 after the claim is made until the date the final decision to  
2 grant the credit or refund is made.

3 G. If as a result of an audit by the department or  
4 a managed audit covering multiple periods an overpayment of tax  
5 is found in any period under the audit, that overpayment may be  
6 credited against an underpayment of the same tax found in  
7 another period under audit pursuant to Section 7-1-29 NMSA  
8 1978, provided that the taxpayer files a claim for refund for  
9 the overpayments identified in the audit.

10 H. Any refund of tax paid under any tax or tax act  
11 administered under Subsection B of Section 7-1-2 NMSA 1978 may  
12 be made, at the discretion of the department, in the form of  
13 credit against future tax payments if future tax liabilities in  
14 an amount at least equal to the credit amount reasonably may be  
15 expected to become due.

16 I. For the purposes of this section, the term "oil  
17 and gas tax return" means a return reporting tax due with  
18 respect to oil, natural gas, liquid hydrocarbons, carbon  
19 dioxide, helium or nonhydrocarbon gas pursuant to the Oil and  
20 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
21 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
22 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
23 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

24 J. The filing of a fully completed original income  
25 tax return, corporate income tax return, corporate income and

1 franchise tax return, estate tax return or special fuel excise  
2 tax return that shows a balance due the taxpayer or a fully  
3 completed amended income tax return, an amended corporate  
4 income tax return, an amended corporate income and franchise  
5 tax return, an amended estate tax return, an amended special  
6 fuel excise tax return or an amended oil and gas tax return  
7 that shows a lesser tax liability than the original return  
8 constitutes the filing of a claim for refund for the difference  
9 in tax due shown on the original and amended returns.

10 K. A claim for a refund may be made until December  
11 31, 2017 if:

12 (1) the claim for a refund is for an amount  
13 paid by the taxpayer or withheld from the taxpayer's earnings  
14 with respect to income earned from service in the armed forces  
15 of the United States; and

16 (2) the basis of the refund claim is that the  
17 income was not subject to taxation by New Mexico because:

18 (a) the taxpayer was an enrolled member  
19 of a federally recognized Indian nation, tribe or pueblo; and

20 (b) the taxpayer's domicile in New  
21 Mexico during that service was: 1) on the member's or the  
22 member's spouse's reservation or pueblo grant; or 2) within the  
23 boundaries of lands held in trust for the benefit of the member  
24 or the member's spouse or the member's or spouse's Indian  
25 nation, tribe or pueblo, which lands was subject to

restrictions against alienation imposed by the United States."

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underscored material = new  
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SENATE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO CAPITAL OUTLAY; REVERTING CERTAIN CAPITAL OUTLAY  
APPROPRIATIONS TO THE TRIBAL INFRASTRUCTURE PROJECT FUND;  
AMENDING LAWS 2006, CHAPTER 111, SECTION 76.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Laws 2006, Chapter 111, Section 76 is amended  
to read:

"Section 76. REVERSIONS OF CERTAIN APPROPRIATIONS FOR  
INDIAN PROJECTS.--The unexpended balance, as defined in  
Subsection D of Section 2 of this act, of an appropriation made  
from the general fund to the Indian affairs department or to  
the aging and long-term services department for projects  
located on lands of an Indian nation, tribe or pueblo,  
including projects that have been reauthorized, shall revert in  
the time frame set forth in Subsection A of Section 2 of this

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1 act to the tribal infrastructure project fund."

2 Section 2. A new section of the Tribal Infrastructure Act  
3 is enacted to read:

4 "[NEW MATERIAL] TRIBAL CAPITAL OUTLAY REVERSIONS.--

5 A. The unexpended balances of a capital outlay  
6 appropriation made after January 1, 2007 from the general fund  
7 to the department or to the aging and long-term services  
8 department for projects located on lands of an Indian nation,  
9 tribe or pueblo shall revert to the project fund.

10 B. For the purpose of this section, "unexpended  
11 balance" means the remainder of an appropriation after  
12 reserving for unpaid costs and expenses covered by binding  
13 written obligations to third parties."

14 Section 3. TEMPORARY PROVISION--RECOMPILATION  
15 INSTRUCTION.--The compiler shall recompile Sections 9-21-17  
16 through 9-21-24 NMSA 1978 (being Laws 2005, Chapter 146,  
17 Sections 1 through 8, as amended) as a part of Chapter 6,  
18 Article 29 NMSA 1978.

underscored material = new  
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SENATE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO MINING; REVISING THE DEFINITIONS OF MINERALS AND  
MINING; REQUIRING PUBLIC HEARINGS PRIOR TO THE ISSUANCE OF ANY  
PERMITS; RESTRICTING THE LOCATION OF URANIUM MINING AND  
DRILLING ACTIVITIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 69-36-3 NMSA 1978 (being Laws 1993,  
Chapter 315, Section 3) is amended to read:

"69-36-3. DEFINITIONS.--As used in the New Mexico Mining  
Act:

A. "affected area" means the area outside of the  
permit area where the land surface, surface water, ground water  
and air resources are [~~impacted~~] affected by mining operations  
within the permit area;

B. "commission" means the mining commission

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1 established in the New Mexico Mining Act;

2 C. "director" means the director of the division or  
3 ~~[his]~~ the director's designee;

4 D. "division" means the mining and minerals  
5 division of the energy, minerals and natural resources  
6 department;

7 E. "existing mining operation" means an extraction  
8 operation that produced marketable minerals for a total of at  
9 least two years between January 1, 1970 and ~~[the effective date~~  
10 ~~of the New Mexico Mining Act]~~ June 18, 1993;

11 F. "exploration" means the act of searching for or  
12 investigating a mineral deposit, including sinking shafts,  
13 tunneling, drilling core and bore holes, digging pits, making  
14 cuts and other works for the purpose of extracting samples  
15 prior to commencement of development or extraction operations  
16 and the building of roads, access ways and other facilities  
17 related to such work; however, activities that cause no or very  
18 little surface disturbance, such as airborne surveys and  
19 photographs, use of instruments or devices that are hand  
20 carried or otherwise transported over the surface to perform  
21 magnetic, radioactive or other tests and measurements, boundary  
22 or claim surveying, location work or other work that causes no  
23 greater disturbance than is caused by ordinary lawful use of  
24 the area by persons not engaged in exploration, are excluded  
25 from the meaning of "exploration";

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1           G. "mineral" means a nonliving commodity that is  
2       extracted from the earth for use or conversion into a saleable  
3       or usable product, but does not include clays, adobe,  
4       flagstone, potash, sand, gravel, caliche, borrow dirt or quarry  
5       rock used as aggregate for construction; coal; surface water or  
6       subsurface water; geothermal resources; or oil and natural gas  
7       together with other chemicals recovered with them;  
8       ~~[commodities, byproduct materials and wastes that are regulated~~  
9       ~~by the nuclear regulatory commission or waste regulated under~~  
10      ~~Subtitle C of the federal Resource Conservation and Recovery~~  
11      ~~Act]~~

12           H. "mining" means the process of obtaining useful  
13      minerals from the earth's crust or from previously disposed or  
14      abandoned mining wastes, including exploration, open-cut mining  
15      and surface operation, the disposal of refuse from underground  
16      and in situ mining, mineral transportation, concentrating,  
17      milling, evaporation, leaching and other processing. "Mining"  
18      does not mean the exploration and extraction of potash, sand,  
19      gravel, caliche, borrow dirt ~~[and]~~ or quarry rock used as  
20      aggregate in construction; the exploration and extraction of  
21      natural petroleum in a liquid or gaseous state by means of  
22      wells or pipes; the development or extraction of coal; the  
23      extraction of geothermal resources; or smelting, refining,  
24      cleaning, preparation, transportation or other off-site  
25      operations not conducted on permit areas; ~~[or the extraction,~~

1 ~~processing or disposal of commodities, byproduct materials or~~  
2 ~~wastes or other activities regulated by the federal nuclear~~  
3 ~~regulatory commission]~~

4 I. "new mining operation" means a mining operation  
5 that engages in a development or extraction operation after  
6 ~~[the effective date of the New Mexico Mining Act]~~ June 18, 1993  
7 and that is not an existing mining operation;

8 J. "permit area" means the geographical area  
9 defined in the permit for a new mining operation or for an  
10 existing mining operation on which mining operations are  
11 conducted or cause disturbance; and

12 K. "reclamation" means the employment during and  
13 after a mining operation of measures designed to mitigate the  
14 disturbance of affected areas and permit areas and, to the  
15 extent practicable, provide for the stabilization of a permit  
16 area following closure that will minimize future impact to the  
17 environment from the mining operation and protect air and water  
18 resources."

19 Section 2. Section 69-36-7 NMSA 1978 (being Laws 1993,  
20 Chapter 315, Section 7, as amended) is amended to read:

21 "69-36-7. COMMISSION--DUTIES.--The commission shall:

22 A. before June 18, 1994, adopt and file reasonable  
23 regulations consistent with the purposes and intent of the New  
24 Mexico Mining Act necessary to implement the provisions of the  
25 New Mexico Mining Act, including regulations that:

1 (1) consider the economic and environmental  
2 effects of their implementation;

3 (2) require permitting of all new and existing  
4 mining operations and exploration; and

5 (3) require annual reporting of production  
6 information to the commission, which shall be kept confidential  
7 if otherwise required by law;

8 B. adopt regulations for new mining operations that  
9 allow the director to select a qualified expert who may:

10 (1) review and comment to the director on the  
11 adequacy of baseline data gathered prior to submission of the  
12 permit application for use in the permit application process;

13 (2) recommend to the director additional  
14 baseline data that may be necessary in the review of the  
15 proposed mining activity;

16 (3) recommend to the director methodology  
17 guidelines to be followed in the collection of all baseline  
18 data; and

19 (4) review and comment on the permit  
20 application;

21 C. adopt regulations that require and provide for  
22 the issuance and renewal of permits for new and existing mining  
23 operations and exploration and that establish schedules to  
24 bring existing mining operations into compliance with the  
25 requirements of the New Mexico Mining Act; provided the term of

.170586.5

1 a permit for a new mining operation shall not exceed twenty  
2 years and the term of renewals of permits for new mining  
3 operations shall not exceed ten years;

4 D. adopt regulations that provide for permit  
5 modifications. The commission shall establish criteria to  
6 determine which permit modifications may have significant  
7 environmental impact. Modifications that the director  
8 determines will have significant environmental impact shall  
9 require public notice and an opportunity for public hearing  
10 pursuant to Subsection K of this section. A permit  
11 modification to the permit for an existing mining operation  
12 shall be obtained for each new discrete processing, leaching,  
13 excavation, storage or stockpile unit located within the permit  
14 area of an existing mining operation and not identified in the  
15 permit of an existing mining operation and for each expansion  
16 of such a unit identified in the permit for an existing mining  
17 operation that exceeds the design limits specified in the  
18 permit. The regulations shall require that permit  
19 modifications for such units be approved if the director  
20 determines that the unit will:

21 (1) comply with the regulations regarding  
22 permit modifications;

23 (2) incorporate the requirements of Paragraphs  
24 (1), (2), (4), (5) and (6) of Subsection H of this section; and

25 (3) be sited and constructed in a manner that



1 facilitates, to the maximum extent practicable, contemporaneous  
2 reclamation consistent with the closeout plan;

3 E. adopt regulations that require new and existing  
4 mining operations to obtain and maintain permits for standby  
5 status. A permit for standby status shall be issued for a  
6 maximum term of five years; provided that, upon application,  
7 the director may renew a permit for standby status for no more  
8 than three additional five-year terms. The regulations shall  
9 require that, before a permit for standby status is issued or  
10 renewed, an owner or operator shall:

11 (1) identify the projected term of standby  
12 status for each unit of the new or existing mining operation;

13 (2) take measures that reduce, to the extent  
14 practicable, the formation of acid and other toxic drainage to  
15 prevent releases that cause federal or state environmental  
16 standards to be exceeded;

17 (3) meet applicable federal and state  
18 environmental standards and regulations during the period of  
19 standby status;

20 (4) stabilize waste and storage units, leach  
21 piles, impoundments and pits during the term of standby status;

22 (5) comply with applicable requirements of the  
23 New Mexico Mining Act and the regulations adopted pursuant to  
24 that act; and

25 (6) provide an analysis of the economic

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1 viability of each unit proposed for standby status;

2 F. establish by regulation closeout plan  
3 requirements for existing mining operations that incorporate  
4 site-specific characteristics, including consideration of  
5 disturbances from previous mining operations, and that take  
6 into account the mining method utilized;

7 G. establish by regulation a procedure for the  
8 issuance of a permit for an existing mining operation and for  
9 modifications of that permit to incorporate approved closeout  
10 plans or portions of closeout plans and financial assurance  
11 requirements for performance of the closeout plans. The permit  
12 shall describe the permit area of the existing mining operation  
13 and the design limits of units of the existing mining operation  
14 based upon the site assessment submitted by the operator. The  
15 permit shall contain a schedule for completion of a closeout  
16 plan. The permit shall thereafter be modified to incorporate  
17 the approved closeout plan or portions of the closeout plan  
18 once financial assurance has been provided for completion of  
19 the closeout plan or the approved portions of the closeout  
20 plan. The permit may be modified for new mining units,  
21 expansions beyond the design limits of a unit at an existing  
22 mining operation or standby status;

23 H. establish by regulation permit and reclamation  
24 requirements for new mining operations that incorporate site-  
25 specific characteristics. These requirements shall, at a

1 minimum:

2 (1) require that new mining operations be  
3 designed and operated using the most appropriate technology and  
4 the best management practices;

5 (2) ~~[assure]~~ ensure protection of human health  
6 and safety, the environment, wildlife and domestic animals;

7 (3) include backfilling or partial backfilling  
8 only when necessary to achieve reclamation objectives that  
9 cannot be accomplished through other mitigation measures;

10 (4) require approval by the director that the  
11 permit area will achieve a self-sustaining ecosystem  
12 appropriate for the life zone of the surrounding areas  
13 following closure unless conflicting with the approved post-  
14 mining land use;

15 (5) require that new mining operations be  
16 designed in a manner that incorporates measures to reduce, to  
17 the extent practicable, the formation of acid and other toxic  
18 drainage that may otherwise occur following closure to prevent  
19 releases that cause federal or state standards to be exceeded;

20 (6) require that nonpoint source surface  
21 releases of acid or other toxic substances shall be contained  
22 within the permit area;

23 (7) require that all waste, waste management  
24 units, pits, heaps, pads and any other storage piles are  
25 designed, sited and constructed in a manner that facilitates,

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1 to the maximum extent practicable, contemporaneous reclamation  
2 and are consistent with the new mining operation's approved  
3 reclamation plan; and

4 (8) where sufficient topsoil is present, take  
5 measures to preserve it from erosion or contamination and  
6 ~~[assure]~~ ensure that it is in a usable condition for sustaining  
7 vegetation when needed;

8 I. adopt regulations that establish a permit  
9 application process for new mining operations that includes:

10 (1) disclosure of ownership and controlling  
11 interests in the new mining operation or submission of the  
12 applicant's most recent form 10K required by the federal  
13 securities exchange commission;

14 (2) a statement of all mining operations  
15 within the United States owned, operated or directly controlled  
16 by the applicant, owner or operator and by persons or entities  
17 that directly control the applicant and the names and the  
18 addresses of regulatory agencies with jurisdiction over the  
19 environmental aspects of those operations and that could  
20 provide a compliance history for those operations ~~[and]~~ over  
21 the preceding ten years. The operator shall assist the  
22 applicant in obtaining compliance history information;

23 (3) a description of the type and method of  
24 mining and the engineering techniques proposed;

25 (4) the anticipated starting and termination

1 dates of each phase of the new mining operation and the number  
2 of acres of land to be affected;

3 (5) the names of all affected watersheds, the  
4 location of any perennial, ephemeral or intermittent surface  
5 stream or tributary into which surface or pit drainage will be  
6 discharged or may possibly be expected to reach and the  
7 location of any spring within the permit area and the affected  
8 area;

9 (6) a determination of the probable hydrologic  
10 consequences of the new mining operation and reclamation, both  
11 on and off the permit area, with respect to the hydrologic  
12 regime, quantity and quality of surface and ground water  
13 systems, including the dissolved and suspended solids under  
14 seasonal flow conditions;

15 (7) cross-sections or plans of the permit area  
16 depicting:

17 (a) the nature and depth of the various  
18 formations of overburden;

19 (b) the location of subsurface water, if  
20 encountered, and its quality;

21 (c) the nature and location of any ore  
22 body to be mined;

23 (d) the location of aquifers and  
24 springs;

25 (e) the estimated position and flow of

1 the water table;

2 (f) the proposed location of waste rock,  
3 tailings, stockpiles, heaps, pads and topsoil preservation  
4 areas; and

5 (g) premining vegetation and wildlife  
6 habitat features present at the site;

7 (8) the potential for geochemical alteration  
8 of overburden, the ore body and other materials present within  
9 the permit area;

10 (9) a reclamation plan that includes a  
11 detailed description of the proposed post-mining land use and  
12 how that use is to be achieved; and

13 (10) premining baseline data as required by  
14 regulations adopted by the commission;

15 J. adopt regulations to coordinate the roles of  
16 permitting agencies involved in regulating activities related  
17 to new and existing mining operations and exploration,  
18 including regulatory requirements, to avoid duplicative and  
19 conflicting administration of the permitting process and other  
20 requirements;

21 K. except for regulations enacted pursuant to  
22 Subsection L of this section, adopt regulations that ensure  
23 that the public and permitting agencies receive notice of each  
24 application for issuance, renewal or revision of a permit for a  
25 new or existing mining operation, for standby status, or

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1 exploration, a variance or an application for release of  
2 financial assurance and any inspection prior to the release of  
3 financial assurance, including a provision that no action shall  
4 be taken on any application until an opportunity for a public  
5 hearing, held in the locality of the operation, is provided and  
6 that all interested persons shall be given a reasonable chance  
7 to submit data, views or arguments orally or in writing and to  
8 examine witnesses testifying at the hearing. An additional  
9 opportunity for a public hearing may be provided if the  
10 applicant makes substantial changes in the proposed action, if  
11 there are significant new circumstances or information bearing  
12 on the proposed action or if the applicant proposes to  
13 [~~substantially~~] increase substantially the scale or  
14 [~~substantially~~] change substantially the nature of the proposed  
15 action and there is public interest and a request for a public  
16 hearing. These regulations shall require at a minimum that the  
17 applicant for issuance, renewal or revisions of a permit or a  
18 variance or an application for release of financial assurance  
19 and any inspection prior to release of financial assurance  
20 shall provide to the director at the time of filing the  
21 application with the director proof that notice of the  
22 application and of the procedure for requesting a public  
23 hearing has been:

24 (1) provided by certified mail to the owners  
25 of record, as shown by the most recent property tax schedule,

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1 of all properties within one-half mile of the property on which  
2 the mining operation is located or is proposed to be located;

3 (2) provided by certified mail to all  
4 municipalities and counties within a ten-mile radius of the  
5 property on which the mining operation is or will be located;

6 (3) published once in a newspaper of general  
7 circulation in each county in which the property on which the  
8 mining operation is or will be located; provided that this  
9 notice shall appear in either the classified or legal  
10 advertisements section of the newspaper and at one other place  
11 in the newspaper calculated to give the general public the most  
12 effective notice and, when appropriate, shall be printed in  
13 both English and Spanish;

14 (4) posted in at least four publicly  
15 accessible and conspicuous places, including the entrance to  
16 the new or existing mining operation if that entrance is  
17 publicly accessible and conspicuous;

18 (5) mailed to all persons who have made a  
19 written request to the director for notice of this application;  
20 and

21 (6) mailed by certified mail to all persons on  
22 a list maintained by the director of individuals and  
23 organizations who have requested notice of applications under  
24 [~~this~~] the New Mexico Mining Act. If the application is  
25 determined to be administratively complete by the director, the



1 applicant shall provide to the director timely proof that  
2 notice of that determination has been provided by first class  
3 mail to everyone who has indicated to the applicant in writing  
4 that they desire information regarding the application and to a  
5 list maintained by the director of individuals and  
6 organizations who have requested notice of applications under  
7 this act;

8 L. adopt regulations to provide for permits,  
9 ~~[without]~~ with notice and hearing, to address mining operations  
10 that have minimal impact on the environment; provided that such  
11 permits shall require general plans and shall otherwise reduce  
12 the permitting requirements of the New Mexico Mining Act;

13 M. establish by regulation a schedule of annual  
14 administrative and permit fees, which shall equal and not  
15 exceed the estimated costs of administration, implementation,  
16 enforcement, investigation and permitting pursuant to the  
17 provisions of the New Mexico Mining Act. The size of the  
18 operation, anticipated inspection frequency and other factors  
19 deemed relevant by the commission shall be considered in the  
20 determination of the fees. The fees established pursuant to  
21 this subsection shall be deposited in the mining act fund;

22 N. establish by regulation a continuing process of  
23 review of mining and reclamation practices in New Mexico that  
24 provides for periodic review and amendment of regulations and  
25 procedures to provide for the protection of the environment and

1 consider the economic effects of the regulations;

2 O. adopt regulations governing the provision of  
3 variances issued by the director, stating the procedures for  
4 seeking a variance, including provisions for public notice and  
5 an opportunity for a hearing in the locality where the variance  
6 will be operative, the limitations on provision of variances,  
7 requiring the petitioner to present sufficient evidence to  
8 prove that failure to grant a variance will impose an undue  
9 economic burden and that granting the variance will not result  
10 in a significant threat to human health, safety or the  
11 environment;

12 P. provide by regulation that, prior to the  
13 issuance of any permit for a new mining operation pursuant to  
14 the provisions of the New Mexico Mining Act, the permit  
15 applicant or operator:

16 (1) shall provide evidence to the director  
17 that other applicable state and federal permits required to be  
18 obtained by the new or existing mining operation either have  
19 been or will be issued before the activities subject to those  
20 permits begin; and

21 (2) shall provide to the director a written  
22 determination from the secretary of environment stating that  
23 the permit applicant has demonstrated that the activities to be  
24 permitted or authorized will be expected to achieve compliance  
25 with all applicable air and water quality and other

1 environmental standards if carried out as described;

2 Q. require by regulation that the applicant file  
3 with the director, prior to the issuance of a permit, financial  
4 assurance. The amount of the financial assurance shall be  
5 sufficient to assure the completion of the performance  
6 requirements of the permit, including closure and reclamation,  
7 if the work [~~had~~] has to be performed by the director or a  
8 third-party contractor and shall include periodic review to  
9 account for any inflationary increases and anticipated changes  
10 in reclamation or closure costs. The regulations shall specify  
11 that financial requirements shall neither duplicate nor be less  
12 comprehensive than the federal financial requirements. The  
13 form and amount of the financial assurance shall be subject to  
14 the approval of the director as part of the permit application;  
15 provided that the financial assurance does not include any type  
16 or variety of self-guarantee or self-insurance;

17 R. require by regulation that the permittee may  
18 file an application with the director for the release of all or  
19 part of the permittee's financial assurance. The permittee  
20 shall not file an application for release of financial  
21 assurance more than once per year for each mining operation.  
22 The application shall describe the reclamation measures  
23 completed and shall contain an estimate of the costs of  
24 reclamation measures that have not been completed. Prior to  
25 release of any portion of the permittee's financial assurance,

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1 the director shall conduct an inspection and evaluation of the  
2 reclamation work involved. The director shall notify persons  
3 who have requested advance notice of the inspection.

4 Interested members of the public shall be allowed to be present  
5 at the inspection of the reclamation work by the director.

6 (1) The director may release in whole or in  
7 part the financial assurance if the reclamation covered by the  
8 financial assurance has been accomplished as required by the  
9 New Mexico Mining Act; provided that the director shall retain  
10 financial assurance at least equal to the approved estimated  
11 costs of completing reclamation measures that have not been  
12 completed; and provided further that for revegetated areas, the  
13 director shall retain the amount of financial assurance  
14 necessary for a third party to reestablish vegetation for a  
15 period of twelve years after the last year of augmented  
16 seeding, fertilizing, irrigation or other work, unless a post-  
17 mining land use is achieved that is inconsistent with the  
18 further need for revegetation. For new mining operations only,  
19 no part of the financial assurance necessary for a third party  
20 to reestablish vegetation shall be released so long as the  
21 lands to which the release would be applicable are contributing  
22 suspended solids above background levels to streamflow of  
23 intermittent and perennial streams.

24 (2) A person with an interest that is or will  
25 be adversely affected by release of the financial assurance may

1 file, with the director within thirty days of the date of the  
2 inspection, written objections to the proposed release from  
3 financial assurance. If written objections are filed and a  
4 hearing is requested, the director shall inform all the  
5 interested parties of the time and place of the hearing at  
6 least thirty days in advance of the public hearing and hold a  
7 public hearing in the locality of the new or existing mining  
8 operation or exploration operation proposed for release from  
9 financial assurance. The date, time and location of the public  
10 hearing shall be advertised by the director in a newspaper of  
11 general circulation in the locality for two consecutive weeks,  
12 and all persons who have submitted a written request in advance  
13 to the director to receive notices of hearings shall be  
14 provided notice at least thirty days prior to the hearing;

15 S. establish coordinated procedures that avoid  
16 duplication for the inspection, monitoring and sampling of air,  
17 soil and water and enforcement of applicable requirements of  
18 the New Mexico Mining Act, regulations adopted pursuant to that  
19 act and permit conditions for new and existing mining  
20 operations and exploration. The regulations shall require, at  
21 a minimum:

22 (1) inspections by the director occurring on  
23 an irregular basis according to the following schedule:

24 (a) at least one inspection per month  
25 when the mining operation is conducting significant reclamation

activities;

(b) at least two inspections per year  
for active mining operations;

(c) at least one inspection per year on  
inactive sites;

(d) at least one inspection per year  
following completion of all significant reclamation activities,  
but prior to release of financial assurance; and

(e) mining operations having a minimal  
impact on the environment and exploration operations ~~[will]~~  
shall be inspected on a schedule to be established by the  
commission;

(2) inspections shall occur without prior  
notice to the permittee or ~~[his]~~ the permittee's agents or  
employees except for necessary on-site meetings with the  
permittee;

(3) when the director determines that a  
condition or practice exists that violates a requirement of the  
New Mexico Mining Act, a regulation adopted pursuant to that  
act or a permit issued under that act, which condition,  
practice or violation also creates an imminent danger to the  
health or safety of the public or will cause significant  
imminent environmental harm, the director shall immediately  
order a cessation of the new or existing mining operation or  
the exploration operation or the portion of that operation

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1 relevant to the condition, practice or violation. The  
2 cessation order shall remain in effect until the director  
3 determines that the condition, practice or violation has been  
4 abated or until modified, vacated or terminated by the director  
5 or the commission;

6 (4) when the director determines that an owner  
7 or operator is in violation of a requirement of the New Mexico  
8 Mining Act, a regulation adopted pursuant to that act or a  
9 permit issued pursuant to that act but the violation does not  
10 create an imminent danger to the health or safety of the public  
11 or will not cause significant imminent environmental harm, the  
12 director shall issue a notice to the owner or operator fixing a  
13 reasonable time, not to exceed sixty days, for the abatement of  
14 the violation. If, upon expiration of the period of time as  
15 originally fixed or subsequently extended for good cause shown,  
16 the director finds that the violation has not been abated, ~~[he]~~  
17 the director shall immediately order a cessation of new or  
18 existing mining operations or exploration operations or the  
19 portion thereof relevant to the violation. The cessation order  
20 shall remain in effect until the director determines that the  
21 violation has been abated; and

22 (5) when the director determines that a  
23 pattern of violations of the requirements of the New Mexico  
24 Mining Act or of the regulations adopted pursuant to that act  
25 or the permit required by that act exists or has existed and,

1 if the director also finds that such violations are caused by  
2 the unwarranted failure of the owner or operator to comply with  
3 the requirements of that act, regulation or permit or that such  
4 violations are willfully caused by the owner or operator, the  
5 director shall immediately issue an order to the owner or  
6 operator to show cause as to why the permit should not be  
7 suspended or revoked;

8 T. provide for the transfer of a permit to a  
9 successor operator, providing for release of the first operator  
10 from obligations under the permit, including financial  
11 assurance, following the approved assumption of such  
12 obligations and financial assurance by the successor operator;

13 U. adopt regulations providing that the owner or  
14 operator of an existing mining operation or a new mining  
15 operation who has completed some reclamation measures prior to  
16 the effective date of the regulations adopted pursuant to the  
17 New Mexico Mining Act may apply for an inspection of those  
18 reclamation measures and a release from further requirements  
19 pursuant to that act for the reclaimed areas if, after an  
20 inspection, the director determines that the reclamation  
21 measures satisfy the requirements of that act and the  
22 substantive requirements for reclamation pursuant to the  
23 applicable regulatory standards; and

24 V. develop and adopt other regulations necessary  
25 and appropriate to carry out the purposes and provisions of the



1 New Mexico Mining Act."

2 Section 3. Section 69-36-12 NMSA 1978 (being Laws 1993,  
3 Chapter 315, Section 12) is amended to read:

4 "69-36-12. NEW MINING OPERATIONS--MINING OPERATION PERMIT  
5 REQUIRED.--

6 A. After ~~[the effective date of the New Mexico~~  
7 ~~Mining Act]~~ June 18, 1993, except as provided in Section ~~[5 of~~  
8 ~~that act]~~ 69-36-5 NMSA 1978, no person shall conduct a new  
9 mining operation without a permit issued by the director.  
10 Applications for permits for new mining operations operating  
11 pursuant to Section ~~[5 of the New Mexico Mining Act]~~ 69-36-5  
12 NMSA 1978 shall be received by the director by December 31,  
13 1995. The director may grant one extension for the submission  
14 of a permit application for a new mining operation for six  
15 months for good cause shown. Prior to receiving a permit for a  
16 new mining operation, an applicant shall submit an application  
17 that complies with the New Mexico Mining Act and ~~[regulation]~~  
18 regulations of the commission, including, at a minimum, one  
19 year of baseline data as required by regulation.

20 B. The director shall issue the permit for a new  
21 mining operation if the director finds that:

- 22 (1) the permit application is complete;  
23 (2) the permit application fee has been paid  
24 and the financial assurance is adequate and has been provided;  
25 (3) reclamation in accordance with the

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1 proposed reclamation plan is economically and technically  
2 feasible;

3 (4) the mining operation is designed to meet  
4 without perpetual care all applicable environmental  
5 requirements imposed by the New Mexico Mining Act and  
6 regulations adopted pursuant to that act and other laws  
7 following closure; and

8 (5) the applicant, the operator or owner or  
9 any persons or entities directly controlled by the applicant,  
10 operator or owner or any persons or entities that directly  
11 control the applicant, operator or owner:

12 (a) are not currently in violation of the  
13 terms of another permit issued by the division or in violation  
14 of any substantial environmental law or substantive  
15 environmental regulation at a mining operation in the United  
16 States, which violation is unabated and is not the subject of  
17 appeal, and have not forfeited or had forfeited financial  
18 assurance required for any mining, reclamation or exploration  
19 permit in the United States; provided that a violation that  
20 occurred prior to the initiation of a legal relationship between  
21 the permit applicant and the violator shall not be considered  
22 for purposes of this paragraph; and

23 (b) have not demonstrated a pattern of  
24 willful violations of the New Mexico Mining Act or other New  
25 Mexico environmental statutes; provided that a violation that

1 occurred prior to the initiation of a legal relationship between  
2 the permit applicant and the violator shall not be considered  
3 for purposes of this paragraph.

4 C. The permit for a new mining operation may be  
5 revoked or suspended by order of the director for violation of  
6 its terms or conditions, a regulation of the commission or a  
7 provision of the New Mexico Mining Act.

8 D. The director shall not issue a permit for a new  
9 mining operation related to uranium mining if such mining will:

10 (1) occur within one thousand feet of an  
11 existing dwelling; or

12 (2) occur within one thousand feet of any  
13 imaginary line extending vertically from an existing dwelling."

14 Section 4. Section 69-36-13 NMSA 1978 (being Laws 1993,  
15 Chapter 315, Section 13) is amended to read:

16 "69-36-13. EXPLORATION PERMIT.--

17 A. After December 31, 1994, a person shall not  
18 engage in exploration operations in New Mexico without first  
19 obtaining a permit to conduct exploration from the director.  
20 In order to be approved by December 31, 1994, the application  
21 for a permit to conduct exploration shall be submitted by  
22 September 1, 1994. A permit to conduct exploration shall not  
23 be issued for a period of more than one year from the date of  
24 issue and is renewable from year to year upon application. An  
25 application for renewal of a permit to conduct exploration

1 shall be filed within thirty days preceding the expiration of  
2 the current permit. A permit to conduct exploration shall not  
3 be renewed if the applicant for renewal is in violation of any  
4 provision of the New Mexico Mining Act.

5 B. A person shall not be issued a permit to conduct  
6 exploration if that person's failure to comply with the  
7 provisions of the New Mexico Mining Act, the regulations  
8 adopted pursuant to that act or a permit issued ~~[under]~~  
9 pursuant to that act has resulted in the forfeiture of  
10 financial assurance.

11 C. An applicant for a permit to conduct exploration  
12 shall not be issued a permit to conduct exploration until ~~[he]~~  
13 the applicant:

14 (1) pays a permit fee for exploration;  
15 (2) agrees to reclaim any surface area damaged  
16 by the applicant during exploration operations in accordance  
17 with a reclamation plan submitted to and approved by the  
18 director; and

19 (3) certifies that ~~[he]~~ the applicant is not  
20 in violation of any other ~~[obligation under]~~ provision of the  
21 New Mexico Mining Act or the regulations adopted pursuant to  
22 that act.

23 D. The application for a permit to conduct  
24 exploration shall include an exploration map in sufficient  
25 detail to locate the area to be explored and to determine

1 whether environmental problems would be encountered. The  
2 commission shall establish regulations to determine the precise  
3 nature of and requirements for the exploration map. The  
4 application shall state what type of exploration and excavation  
5 techniques will be employed in disturbing the land during  
6 exploration operations.

7 E. Prior to the issuance of a permit to conduct  
8 exploration, the applicant shall provide to the division  
9 financial assurance in a form and amount as determined by the  
10 director pursuant to Section [~~7 of the New Mexico Mining Act~~]  
11 69-36-7 NMSA 1978. The financial assurance shall be released  
12 only in accordance with the provisions of [~~that~~] the New Mexico  
13 Mining Act.

14 F. In the event that the holder of a permit to  
15 conduct exploration desires to mine the permit area to conduct  
16 exploration and [~~he~~] the holder has fulfilled all of the  
17 requirements for a permit for new mining operations, the  
18 director shall allow postponement of the reclamation of the  
19 acreage explored if that acreage is incorporated into the  
20 complete reclamation plan submitted with the application for a  
21 permit for a new mining operation. Land affected by exploration  
22 or excavation under a permit for exploration and not covered by  
23 the reclamation plan shall be reclaimed in a manner acceptable  
24 to the director within two years after the completion of  
25 exploration or abandonment of the site.

1           G. The director shall not issue a permit for  
2 exploration drilling related to uranium mining if such drilling  
3 will:

4                   (1) occur within one thousand feet of an  
5 existing dwelling; or

6                   (2) occur within one thousand feet of any  
7 imaginary line extending vertically from an existing dwelling."

8           Section 5. Section 74-6-5 NMSA 1978 (being Laws 1973,  
9 Chapter 326, Section 4, as amended) is amended to read:

10           "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

11                   A. By regulation, the commission may require persons  
12 to obtain from a constituent agency designated by the commission  
13 a permit for the discharge of any water contaminant or for the  
14 disposal or reuse of septage or sludge.

15                   B. The commission shall adopt regulations  
16 establishing procedures for certifying federal water quality  
17 permits.

18                   C. Prior to the issuance of a permit, the  
19 constituent agency may require the submission of plans,  
20 specifications and other relevant information that it deems  
21 necessary.

22                   D. The commission shall by regulation set the dates  
23 upon which applications for permits shall be filed and designate  
24 the time periods within which the constituent agency shall,  
25 after the filing of an administratively complete application for

1 a permit, either grant the permit, grant the permit subject to  
2 conditions or deny the permit.

3 E. The constituent agency shall deny any application  
4 for a permit or deny the certification of a federal water  
5 quality permit if:

6 (1) the effluent would not meet applicable  
7 state or federal effluent regulations, standards of performance  
8 or limitations;

9 (2) any provision of the Water Quality Act  
10 would be violated;

11 (3) the discharge would cause or contribute to  
12 water contaminant levels in excess of any state or federal  
13 standard. Determination of the discharges' effect on ground  
14 water shall be measured at any place of withdrawal of water for  
15 present or reasonably foreseeable future use. Determination of  
16 the discharges' effect on surface waters shall be measured at  
17 the point of discharge; or

18 (4) the applicant has, within the ten years  
19 immediately preceding the date of submission of the permit  
20 application:

21 (a) knowingly misrepresented a material  
22 fact in an application for a permit;

23 (b) refused or failed to disclose any  
24 information required under the Water Quality Act;

25 (c) been convicted of a felony or other

1 crime involving moral turpitude;

2 (d) been convicted of a felony in any  
3 court for any crime defined by state or federal law as being a  
4 restraint of trade, price-fixing, bribery or fraud;

5 (e) exhibited a history of willful  
6 disregard for environmental laws of any state or the United  
7 States; or

8 (f) had an environmental permit revoked  
9 or permanently suspended for cause under any environmental laws  
10 of any state or the United States.

11 F. The commission shall by regulation develop  
12 procedures that ensure that the public, affected governmental  
13 agencies and any other state whose water may be affected shall  
14 receive notice of each application for issuance, renewal or  
15 modification of a permit. Public notice shall include:

16 (1) for issuance or modification of a permit:

17 (a) notice by mail to adjacent and nearby  
18 landowners; local, state and federal governments; land grant  
19 organizations; ditch associations; and Indian nations, tribes or  
20 pueblos;

21 (b) posting at a place conspicuous to the  
22 public and near the discharge or proposed discharge site; and

23 (c) a display advertisement in English  
24 and Spanish in a newspaper of general circulation in the  
25 location of the discharge or proposed discharge; provided,

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1 however, that the advertisement shall not be displayed in the  
2 classified or legal advertisement sections; and

3 (2) for issuance of renewals of permits:

4 (a) notice by mail to the interested  
5 public, municipalities, counties, land grant organizations,  
6 ditch associations and Indian nations, tribes or pueblos; and

7 (b) a display advertisement in English  
8 and Spanish in a newspaper of general circulation in the  
9 location of the discharge; provided, however, that the  
10 advertisement shall not be displayed in the classified or legal  
11 advertisement sections.

12 G. No ruling shall be made on any application for a  
13 permit without opportunity for a public hearing at which all  
14 interested persons shall be given a reasonable chance to submit  
15 evidence, data, views or arguments orally or in writing and to  
16 examine witnesses testifying at the hearing. The hearing shall  
17 be recorded. Any person submitting evidence, data, views or  
18 arguments shall be subject to examination at the hearing.

19 H. The commission may adopt regulations for the  
20 operation and maintenance of the permitted facility, including  
21 requirements, as may be necessary or desirable, that relate to  
22 continuity of operation, personnel training and financial  
23 responsibility, including financial responsibility for  
24 corrective action.

25 I. Permits shall be issued for fixed terms not to

1 exceed five years, except that for new discharges, the term of  
2 the permit shall commence on the date the discharge begins, but  
3 in no event shall the term of the permit exceed seven years from  
4 the date the permit was issued.

5 J. By regulation, the commission may impose  
6 reasonable conditions upon permits requiring permittees to:

7 (1) install, use and maintain effluent  
8 monitoring devices;

9 (2) sample effluents and receiving waters for  
10 any known or suspected water contaminants in accordance with  
11 methods and at locations and intervals as may be prescribed by  
12 the commission;

13 (3) establish and maintain records of the  
14 nature and amounts of effluents and the performance of effluent  
15 control devices;

16 (4) provide any other information relating to  
17 the discharge or direct or indirect release of water  
18 contaminants; and

19 (5) notify a constituent agency of the  
20 introduction of new water contaminants from a new source and of  
21 a substantial change in volume or character of water  
22 contaminants being introduced from sources in existence at the  
23 time of the issuance of the permit.

24 K. The commission shall provide by regulation a  
25 schedule of fees for permits, not exceeding the estimated cost

1 of investigation and issuance, modification and renewal of  
2 permits. Fees collected pursuant to this section shall be  
3 deposited in the water quality management fund.

4 L. The issuance of a permit does not relieve any  
5 person from the responsibility of complying with the provisions  
6 of the Water Quality Act, any applicable regulations or water  
7 quality standards of the commission or any applicable federal  
8 laws, regulations or standards.

9 M. A permit may be terminated or modified by the  
10 constituent agency that issued the permit prior to its date of  
11 expiration for any of the following causes:

12 (1) violation of any condition of the permit;

13 (2) obtaining the permit by misrepresentation  
14 or failure to disclose fully all relevant facts;

15 (3) violation of any provisions of the Water  
16 Quality Act or any applicable regulations, standard of  
17 performance or water quality standards;

18 (4) violation of any applicable state or  
19 federal effluent regulations or limitations; or

20 (5) change in any condition that requires  
21 either a temporary or permanent reduction or elimination of the  
22 permitted discharge.

23 N. If the constituent agency denies, terminates or  
24 modifies a permit or grants a permit subject to condition, the  
25 constituent agency shall notify the applicant or permittee by

1 certified mail of the action taken and the reasons. Notice  
2 shall also be given by mail to persons who participated in the  
3 permitting action.

4 O. A person who participated in a permitting action  
5 before a constituent agency or a person affected by a  
6 certification of a federal permit and who is adversely affected  
7 by such permitting action or certification may file a petition  
8 for review before the commission. Unless a timely petition for  
9 review is made, the decision of the constituent agency shall be  
10 final and not subject to judicial review. The petition shall:

11 (1) be made in writing to the commission within  
12 thirty days from the date notice is given of the constituent  
13 agency's action;

14 (2) include a statement of the issues to be  
15 raised and the relief sought; and

16 (3) be provided to all other persons submitting  
17 evidence, data, views or arguments in the proceeding before the  
18 constituent agency.

19 P. If a timely petition for review is made, the  
20 commission shall consider the petition within ninety days after  
21 receipt of the petition. The commission shall notify the  
22 petitioner and the applicant or permittee, if other than the  
23 petitioner, by certified mail of the date, time and place of the  
24 review. If the petitioner is not the applicant or permittee,  
25 the applicant or permittee shall be a party to the proceeding.

1 The commission shall ensure that the public receives notice of  
2 the date, time and place of the review.

3 Q. The commission shall review the record compiled  
4 before the constituent agency, including the transcript of any  
5 public hearing held on the application or draft permit, and shall  
6 allow any party to submit arguments. The commission may  
7 designate a hearing officer to review the record and the  
8 arguments of the parties and recommend a decision to the  
9 commission. The commission shall consider and weigh only the  
10 evidence contained in the record before the constituent agency  
11 and the recommended decision of the hearing officer, if any, and  
12 shall not be bound by the factual findings or legal conclusions  
13 of the constituent agency. Based on the review of the evidence,  
14 the arguments of the parties and recommendations of the hearing  
15 officer, the commission shall sustain, modify or reverse the  
16 action of the constituent agency. The commission shall enter  
17 ultimate findings of fact and conclusions of law and keep a  
18 record of the review.

19 R. Prior to the date set for review, if a party shows  
20 to the satisfaction of the commission that there was no  
21 reasonable opportunity to submit comment or evidence on an issue  
22 being challenged, the commission shall order that additional  
23 comment or evidence be taken by the constituent agency. Based on  
24 the additional evidence, the constituent agency may revise the  
25 decision and shall promptly file with the commission the

1 additional evidence received and action taken. The commission  
2 shall consider the additional evidence within ninety days after  
3 receipt of the additional evidence and shall notify the  
4 petitioner and the applicant or permittee, if other than the  
5 petitioner, of the date, time and place of the review.

6 S. The commission shall notify the petitioner and all  
7 other participants in the review proceeding of the action taken  
8 by the commission and the reasons for that action.

9 T. The constituent agency shall deny any application  
10 for a permit or deny the certification of a federal water quality  
11 permit if the permit is related to drilling for in situ uranium  
12 mining and if the drilling will:

13 (1) occur within one thousand feet of an  
14 existing dwelling; or

15 (2) occur within one thousand feet of any  
16 imaginary line extending vertically from an existing dwelling."

17 Section 6. EMERGENCY.--It is necessary for the public  
18 peace, health and safety that this act take effect immediately.

underscored material = new  
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SENATE JOINT MEMORIAL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

URGING CONGRESS TO PASS THE NORTHWESTERN NEW MEXICO RURAL WATER  
PROJECTS ACT.

WHEREAS, the state of New Mexico and the Navajo Nation  
have negotiated the San Juan River Basin in New Mexico Navajo  
Nation Water Rights Settlement Agreement, referred to in this  
memorial as the "settlement agreement", that quantifies the  
Navajo Nation's rights to use water of the San Juan river basin  
in New Mexico; and

WHEREAS, the Navajo Nation, the state of New Mexico and  
the city of Gallup have approved the settlement agreement or  
related agreements that will implement the settlement agreement  
and the construction of the Navajo-Gallup water supply project;  
and

WHEREAS, both the interstate stream commission and the

.170302.2

1 state engineer have approved the settlement agreement; and

2 WHEREAS, the settlement agreement fits within New Mexico's  
3 apportionment under the Upper Colorado River Basin Compact and  
4 provides benefits to the state of New Mexico, the Navajo Nation  
5 and the Jicarilla Apache Nation and also provides substantial  
6 protections to other parties to the San Juan river  
7 adjudication; and

8 WHEREAS, construction of the Navajo-Gallup water supply  
9 project will provide water to numerous chapters of the Navajo  
10 Nation and will reduce the need for eighty thousand Navajo men,  
11 women and children to bear the financial and physical burden of  
12 hauling water for domestic use; and

13 WHEREAS, construction of the Navajo-Gallup water supply  
14 project will provide the city of Gallup with a renewable  
15 surface water supply that is essential to the city's future  
16 growth; and

17 WHEREAS, the state of New Mexico has already appropriated  
18 more than twenty-five million dollars (\$25,000,000) for the  
19 implementation of planning and construction of distribution  
20 systems for the water that will be delivered to the Gallup area  
21 through the Navajo-Gallup water supply project;

22 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
23 STATE OF NEW MEXICO that it express its support of the San Juan  
24 River Basin in New Mexico Navajo Nation Water Rights Settlement  
25 Agreement; and

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1           BE IT FURTHER RESOLVED that it request the United States  
2 senate and the United States house of representatives to  
3 approve, during the one-hundred-tenth session of congress, the  
4 Northwestern New Mexico Rural Water Projects Act that has been  
5 introduced in the senate as Senate Bill 1171 and in the house  
6 of representatives as House Bill 1970; and

7           BE IT FURTHER RESOLVED that copies of this memorial be  
8 transmitted to the chair of the United States senate committee  
9 on energy and natural resources, the chair of the subcommittee  
10 on water and power of the United States house of  
11 representatives committee on natural resources, New Mexico's  
12 congressional delegation, the governor, the president of the  
13 Navajo Nation, the speaker of the Navajo Nation council, the  
14 president of the Jicarilla Apache Nation, the city council of  
15 Gallup and the mayor of Gallup.

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HOUSE JOINT MEMORIAL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

REQUESTING STATE AGENCIES TO STUDY THE NECESSITY FOR AND  
FEASIBILITY OF ESTABLISHING A STATE SUPERFUND PROGRAM FOR THE  
CLEANUP OF URANIUM-CONTAMINATED SITES IN NEW MEXICO.

WHEREAS, beginning in the 1950s and 1960s, private  
companies began extensive exploration, mining and milling  
activities related to the uranium deposits located in the  
Grants mineral belt in northwestern New Mexico on private,  
state, federal and tribal lands; and

WHEREAS, these activities continued through the 1990s,  
resulting in the mining and milling in excess of one hundred  
seventy-five thousand tons of uranium ore from lands located in  
New Mexico; and

WHEREAS, hundreds of abandoned, unremediated uranium mines  
exist in communities in northwestern New Mexico, and scores of

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1 Native American and non-Native American families still live in  
2 close proximity to those abandoned, unremediated mine sites;  
3 and

4 WHEREAS, unremediated contamination resulting from past  
5 uranium exploration, mining and milling activities constitutes  
6 a continuing threat to the health and well-being of residents  
7 of northwestern New Mexico; and

8 WHEREAS, state and federal studies have repeatedly shown  
9 that surface water, ground water and soils were and remain  
10 irreversibly contaminated by past uranium mining and milling  
11 activities and that livestock that grazed in the mining areas  
12 were found to have hazardous levels of radioactive materials in  
13 their edible organs and muscle; and

14 WHEREAS, contamination from the northeast Church Rock  
15 uranium mine site abandoned in 1979 was left unremediated for  
16 more than twenty years before the United States environmental  
17 protection agency commenced cleanup activities in 2007; and

18 WHEREAS, other sites in New Mexico that pose a threat to  
19 the health and well-being of New Mexicans and that should be  
20 remediated are unlikely to be remediated through the United  
21 States environmental protection agency "superfund" program  
22 because they rank too low on the priority scale in comparison  
23 to other superfund sites throughout the country, in part  
24 because the number of persons affected by the New Mexico sites  
25 is relatively small;

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1           NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
2     STATE OF NEW MEXICO that the energy, minerals and natural  
3     resources department, the department of environment and the  
4     department of health be requested to undertake jointly an  
5     inventory of the location of sites in New Mexico that have been  
6     contaminated by uranium exploration, mining and milling  
7     activities and the extent of contamination at each of those  
8     sites, including an assessment of potential short- and long-  
9     term harm to humans, and to make recommendations regarding the  
10    feasibility of establishing a state "superfund" program to  
11    undertake or accelerate the cleanup of sites posing threats to  
12    human health and possible means of funding such cleanup  
13    activities; and

14           BE IT FURTHER RESOLVED that the energy, minerals and  
15    natural resources department, the department of environment and  
16    the department of health jointly present their findings and  
17    recommendations to the appropriate interim legislative  
18    committees by September 1, 2008; and

19           BE IT FURTHER RESOLVED that copies of this memorial be  
20    transmitted to the governor; the secretary of energy, minerals  
21    and natural resources; the secretary of environment; the  
22    secretary of health; the president of the Navajo Nation; the  
23    speaker of the Navajo Nation council; the governor of the  
24    Pueblo of Acoma; and the governor of the Pueblo of Laguna.

underscored material = new  
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HOUSE JOINT MEMORIAL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

REQUESTING STATE AGENCIES TO LEND THEIR SUPPORT TO THE "TOUR OF  
THE NATIONS" BICYCLE EVENT.

WHEREAS, the Pueblo of Isleta, the Pueblo of Acoma, the  
Pueblo of Laguna, the Pueblo of Zuni, the Inter-tribal Indian  
Ceremonial and Adventure Gallup and Beyond are organizing the  
second "Tour of the Nations" bicycle event; and

WHEREAS, the Tour of the Nations bicycle event will be a  
five-day recreational and educational bicycle ride that will  
take its participants through three of New Mexico's pueblos and  
two national monuments; and

WHEREAS, the participants will experience history as they  
tour Anasazi ruins, view remaining evidence of Spanish, Mexican  
and Anglo explorers and stay as guests in three pueblos; and

WHEREAS, the participants will spend each night at a

1 different pueblo where they will be treated to a tour, a  
2 traditional meal and traditional performances; and

3 WHEREAS, the Tour of the Nations will end in Gallup where  
4 participants will receive tickets to participate in the eighty-  
5 seventh Inter-tribal Indian Ceremonial, the longest-standing  
6 Native American event in New Mexico; and

7 WHEREAS, the Tour of the Nations will expose participants  
8 to Native American culture, North American culture and  
9 southwest scenery through one of the simplest and most intimate  
10 means of travel, the bicycle; and

11 WHEREAS, the Tour of the Nations will be an event that  
12 will bring more than two hundred bicycle riders and their  
13 friends and families to pueblos, national monuments and other  
14 attractions along the route of the tour; and

15 WHEREAS, the participants on the tour and their friends  
16 and families will provide an economic boost to the communities  
17 along the route of the tour; and

18 WHEREAS, participants will be riding their bicycles on  
19 public roads that will be open to vehicular traffic;

20 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
21 STATE OF NEW MEXICO that it request all state agencies to  
22 cooperate with the sponsors of the second Tour of the Nations  
23 and help to ensure that the event will be as safe as possible  
24 for all participants; and

25 BE IT FURTHER RESOLVED that copies of this memorial be

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transmitted to the governor, the secretary of cultural affairs,  
the secretary of economic development, the secretary of energy,  
minerals and natural resources, the secretary of environment,  
the secretary of general services, the secretary of health, the  
secretary of Indian affairs, the secretary of public safety,  
the secretary of tourism and the secretary of transportation.

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SENATE JOINT MEMORIAL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

REQUESTING THE OFFICE OF THE ATTORNEY GENERAL, THE PUBLIC  
REGULATION COMMISSION AND THE TAXATION AND REVENUE DEPARTMENT  
TO INVESTIGATE THE COLLECTION OF STATE AND COUNTY TAXES BY  
UTILITIES FROM NATIVE AMERICANS RESIDING ON TRIBAL LANDS.

WHEREAS, Native Americans residing on tribal lands are  
serviced by nontribal utilities, including telecommunications  
companies; and

WHEREAS, nontribal utilities, including telecommunications  
companies, are not permitted to collect state and county taxes  
for services provided to Native American customers residing on  
tribal lands; and

WHEREAS, some nontribal utilities, including  
telecommunications companies, allegedly continue to collect  
state and county taxes for services provided to Native American



1 customers residing on tribal lands even when those customers  
2 provide information identifying themselves as tribal members;

3 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
4 STATE OF NEW MEXICO that it request the office of the attorney  
5 general, the public regulation commission and the taxation and  
6 revenue department to investigate the collection of state and  
7 county taxes by utilities, including telecommunications  
8 companies, from Native Americans residing on tribal lands; and

9 BE IT FURTHER RESOLVED that the office of the attorney  
10 general, the public regulation commission and the taxation and  
11 revenue department report their findings to the interim Indian  
12 affairs committee by September 30, 2008; and

13 BE IT FURTHER RESOLVED that copies of this memorial be  
14 transmitted to the attorney general, the chair of the public  
15 regulation commission, the secretary of taxation and revenue,  
16 the president of the Navajo Nation, the speaker of the Navajo  
17 Nation council, the president of the Mescalero Apache Tribe,  
18 the president of the Jicarilla Apache Nation and the governors  
19 of the nineteen Indian pueblos in New Mexico.

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SENATE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A COMPREHENSIVE KIDNEY HEALTH STUDY  
OF THE RESIDENTS OF THE EASTERN AGENCY OF THE NAVAJO NATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One hundred thousand dollars  
(\$100,000) is appropriated from the general fund to the  
department of health for expenditure in fiscal years 2009 and  
2010 to undertake a comprehensive kidney health study of  
residents of the eastern agency of the Navajo Nation. Any  
unexpended or unencumbered balance remaining at the end of  
fiscal year 2010 shall revert to the general fund.

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HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO TRANSPORTATION; MAKING AN APPROPRIATION TO THE  
TRIBAL INFRASTRUCTURE PROJECT FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tribal Infrastructure Act  
is enacted to read:

"[NEW MATERIAL] TRANSFERS FROM GENERAL FUND.--Annually by  
August 1, the secretary of finance and administration shall  
determine the revenue received from revenue-sharing agreements  
with Indian tribes pursuant to Indian gaming compacts during  
the previous fiscal year and shall transfer from the general  
fund an amount equal to ten percent of that revenue to the  
tribal infrastructure project fund. Funds transferred pursuant  
to this section shall be used only for transportation-related  
projects, including roads, bridges and maintenance facilities,

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1 equipment and operations."

2 Section 2. TEMPORARY PROVISION--RECOMPILATION  
3 INSTRUCTION.--The compiler shall recompile Sections 9-21-17  
4 through 9-21-24 NMSA 1978 (being Laws 2005, Chapter 146,  
5 Sections 1 through 7, as amended) as a part of Chapter 6,  
6 Article 29 NMSA 1978.

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HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR OUTDOOR ADVENTURE RECREATION AND  
TOURISM IN MCKINLEY COUNTY; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Twenty-five thousand dollars  
(\$25,000) is appropriated from the general fund to the tourism  
department for expenditure in fiscal years 2008 and 2009 to  
promote outdoor adventure recreation and tourism in McKinley  
county. Any unexpended or unencumbered balance remaining at  
the end of fiscal year 2009 shall revert to the general fund.

Section 2. EMERGENCY.--It is necessary for the public  
peace, health and safety that this act take effect immediately.

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underscored material = new  
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HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE NEW MEXICO STATE UNIVERSITY  
COOPERATIVE EXTENSION SERVICE TO DEVELOP TRIBAL COOPERATIVE  
EXTENSION CENTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Five hundred thousand dollars  
(\$500,000) is appropriated from the general fund to the board  
of regents of New Mexico state university for expenditure in  
fiscal year 2009 for the cooperative extension service for the  
start-up costs of three proposed tribal cooperative extension  
centers to provide a base for intercultural youth programs,  
health-based programs and natural resource and agricultural  
information services that are currently not available in the  
targeted New Mexico tribal communities. Any unexpended or  
unencumbered balance remaining at the end of fiscal year 2009

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1 shall revert to the general fund.

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HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A COMPREHENSIVE HEALTH STUDY OF THE  
EFFECTS OF PAST URANIUM MINING AND MILLING PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Two hundred thousand dollars  
(\$200,000) is appropriated from the general fund to the  
department of health for expenditure in fiscal years 2009 and  
2010 to undertake a comprehensive health study of the effects  
of past uranium mining and milling practices on the health of  
residents of McKinley and Cibola counties, including members of  
the Navajo Nation. Any unexpended or unencumbered balance  
remaining at the end of fiscal year 2010 shall revert to the  
general fund.

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HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR NATIVE AMERICAN INDEPENDENT LIVING  
CENTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Two hundred fifty thousand  
dollars (\$250,000) is appropriated from the general fund to the  
vocational rehabilitation division of the public education  
department for expenditure in fiscal year 2009 for independent  
living centers with sites in the Pueblo of Laguna and the  
Pueblo of San Felipe to support disabled Native Americans. The  
centers will provide services to individuals with disabilities  
in the Pueblos of Acoma, Laguna, Isleta, Sandia, Santa Ana, San  
Felipe, Santo Domingo, Cochiti, Zia and Jemez. Any unexpended  
or unencumbered balance remaining at the end of fiscal year  
2009 shall revert to the general fund.

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BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

MAKING AN APPROPRIATION FOR TRIBAL EMERGENCY MANAGEMENT  
SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Four million seventy thousand  
dollars (\$4,070,000) is appropriated from the general fund to  
the Indian affairs department for expenditure in fiscal year  
2009 to provide funding for tribal emergency management  
services in the amount of one hundred eighty-five thousand  
dollars (\$185,000) for each of the twenty-two Indian pueblos  
and tribes in New Mexico. Any unexpended or unencumbered  
balance remaining at the end of fiscal year 2009 shall revert  
to the general fund.

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HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO EXPAND FUNDING FOR IMPLEMENTATION OF  
THE INDIAN EDUCATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Two million five hundred  
thousand dollars (\$2,500,000) is appropriated from the general  
fund to the public education department for expenditure in  
fiscal year 2009 to expand implementation of the provisions of  
the Indian Education Act. Any unexpended or unencumbered  
balance remaining at the end of fiscal year 2009 shall revert  
to the general fund.

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SENATE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR TRIBAL EMERGENCY MANAGEMENT  
SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--

A. Four hundred fifty thousand dollars (\$450,000)  
is appropriated from the general fund to the Indian affairs  
department for expenditure in fiscal year 2009 to provide  
funding for tribal emergency management services in the  
following amounts:

(1) one hundred fifty thousand dollars  
(\$150,000) for the ten southern Indian pueblos;

(2) one hundred fifty thousand dollars  
(\$150,000) for the eight northern Indian pueblos;

(3) seventy-five thousand dollars (\$75,000)

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1 for the Jicarilla Apache Nation; and

2 (4) seventy-five thousand dollars (\$75,000)

3 for the Mescalero Apache Tribe.

4 B. Any unexpended or unencumbered balance remaining  
5 at the end of fiscal year 2009 shall revert to the general  
6 fund.

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SENATE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A PILOT PROGRAM RELATING TO THE  
AUTHENTICITY OF NATIVE AMERICAN ARTS AND CRAFTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Three hundred thousand dollars  
(\$300,000) is appropriated from the general fund to the  
cultural affairs department for expenditure in fiscal year 2009  
to establish a pilot program to educate artisans and consumers  
in the authenticity of Native American arts and crafts and to  
promote Native American artisans through certification of  
Native American arts and crafts. Any unexpended or  
unencumbered balance remaining at the end of fiscal year 2009  
shall revert to the general fund.

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HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A NATIVE AMERICAN YOUTH-LED PEER-  
TO-PEER SUICIDE PREVENTION PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One hundred thousand dollars  
(\$100,000) is appropriated from the general fund to the  
department of health for expenditure in fiscal year 2009 to  
implement in McKinley and San Juan counties a Native American  
youth-led peer-to-peer suicide prevention program. This  
appropriation is contingent upon the receipt of matching funds  
in at least an equal amount from a nonstate source. Any  
unexpended or unencumbered balance remaining at the end of  
fiscal year 2009 shall revert to the general fund.

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